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Supreme Court, U.S.
FILED

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NO. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Wayne Earl Dahl,

Petitioner,

vs.

The City of Fridley, Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In evaluating a First Amendment challenge to a regulation of signs, need a reviewing court defer to the judgment of a legislative body, when all evidence available to the legislative body indicates that the regulation is unrelated to any legitimate public interest?

PARTIES TO THE PROCEEDING

Petition Wayne Earl Dahl is a citizen of the United States and of the State of Minnesota.

Respondent City of Fridley, Minnesota, is a municipal corporation organized under the laws of the State of Minnesota.

All parties to the proceedings below are parties to this petition.

CORPORATE DISCLOSURE STATEMENT

None required.

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OPINIONS BELOW

The unreported order of the Minnesota Supreme Court was entered on June 15, 2004, and is set forth in the Appendix at App.1.

The Minnesota Supreme Court's order denied further review of an opinion of the Minnesota Court of Appeals reported at 676 N.W. 2d 305 (Minn. App. March 23, 2004), which opinion is set forth in the Appendix at App.2-App.20.

The unreported opinion of the Anoka County District Court relating to Petitioner's motion to dismiss the criminal complaint against him is set forth in Petitioner's Appendix at App.21.

JURISDICTION

The Minnesota Supreme Court entered its order denying further review on June 15, 2004. This Court has jurisdiction pursuant to Title 28 U.S.C. Sec. 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amend. I provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people

> peaceable to assemble and to petition the government for a redress of grievances."

U.S. Const. Amend. XIV, Sec. 1 provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fridley sign ordinance, which is the subject of this action is set fort, in pertinent part, in the Appendix at App.52-App.65.

STATEMENT OF THE CASE

On May 15, 2003, Petitioner was charged by formal complaint, a copy of which is set forth in Appendix at App.66-App.73, with 20 separate counts, 16 of which charged him with violation of various provisions of the Fridley city sign ordinance, and 4 of which charged him with public nuisance, in violation of Minn. Stat. Sec. 609.74, Subd. 2.[1]

On August 6, 2002, Petitioner moved to dismiss the complaint in its entirety.[2]

As part of his motion to dismiss, Petitioner challenged, under the First Amendment to the United States Constitution, the validity of the Fridley ordinance prohibiting "motion signs"[3] "flashing signs"[4] and prohibiting automatic changeable signs from changing messages more than once every 15 minutes except for signs displaying time, temperature and/or date."[5]

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[1] This statute makes it a criminal if someone "interferes, obstructs, or renders dangerous for passage any public highway or right-of-way or waters used by the public." Petitioner was acquitted of all four of these counts, so that provision is not before this Court on this petition. TII 442-TII444.

[2] A copy of the dismissal motion is set forth in the Appendix at App.74-App.76.

[3] Fridley Municipal Code Sec. 214.04.6, Appendix at App.60, prohibits "any motion signs," defined in Sec. 214.02.19 Appendix at App.55, as "a sign which revolves, rotates, has moving parts or gives the illusion of motion."

[4] Fridley Code Sec. 214.04.07 prohibits "any flashing signs" Appendix at App.60. The term is defined in Sec. 214.02.13 as "an illuminated sign which has intermittent flashing lights, revolving beacons, zip flashers or exhibits a notable change in color or light intensity." Id. at App.54.

As part of the factual record submitted in support of his motion to dismiss, Petitioner submitted the record made before the Fridley Planning Commission and City Council, wherein he employed Dactronics, Inc., an electronic sign manufacturer out of Brookings, South Dakota, to petition the Fridley City Council to amend the text of its zoning ordinance to permit the changing of messages on an electronic readable sign more than once every 15 minutes. The extensive public record compiled during the zoning text change reveals absolutely no evidence whatsoever that the city's restrictions on changing a sign more than every 15 minutes, prohibition against motion signs, or prohibition of flashing signs would advance the city's purported concern over traffic safety in any manner whatsoever. Indeed, quite to the contrary, the city had before it essentially uncontradicted evidence that its restrictions did not relate at all to traffic safety. This evidence included the following:

5This prohibition is contained in Fridley Municipal Code Sec. 214.07.01. Id. at App.65.

*Two reports from the United States Department of Transportation, Federal Highway Administration, one indicating that electronic readerboards fully complied with federal law, and a second indicating that research on the distracting nature of such signs was essentially inconclusive. Appendix at App.116-App.117.

The city also possessed uncontradicted evidence from two separate cities, indicating that their studies indicated no relationship whatsoever between moving electronic readerboards and traffic accidents. Id. at App.127-App.128.

*In addition, Kelly Koenig of Dactronics presented to the Fridley City Council, the following facts, which were absolutely uncontradicted in proceedings before the Council or the District Court:

> "A. **SAFETY.**
>
> 1. **Local Fact:** an electronic message center was installed at the NE corner of Osborne Road and University Ave. on June 12, 2000. According to Fridley MN police report, there were 20 accidents during the six months prior to the installation compared to 17 accidents during the six months after installation.
>
> 2. **Local Fact:** An electronic message

center was installed in front of the city offices in Mounds View, MN in 1999. According to a statement by Chief of Police Clark, the traffic accident rate has decreased since the sign has been installed. We are currently waiting for the documentation to support his statement.

3. **National Fact**: Hundreds of electronic displays have been and are currently being installed by the Departments of Transportation for use in highway traffic communications to help reduce accidents. The message frequency (frame change rate) ranges from 1-5 seconds depending on the sign size and traffic speed.

4. **National Fact**: Road builders are often required by State departments of transportation to place electronic message displays at construction sites to help reduce traffic accidents." App.137-App.139.[6]

On December 3, 2002, the Anoka County District Court issued an order and memorandum, set forth in the Appendix at App.21-App.51, granting the motion to dismiss in part and denying it in part. In his order Judge Kammeyer dismissed all four counts relating to the ordinance requiring prohibiting changing the message on an automatic changeable sign more than once every 15 minutes, holding that provision of the ordinance unconstitutional under the First Amendment. However, Judge Kammeyer upheld the validity of the prohibition against motion and flashing signs. See Appendix at App.37-App.51.[7]

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[6] Petitioner supplemented this testimony before the City Council with an uncontradicted affidavit of Sunnie LaMarre, set forth in Appendix at App.129-App.131, attaching a video tape of a highway department sign placed on Interstate 94 approaching the Lowry Hill tunnel on September 30, 2002, which sign flashed different messages to the driving public, with the message changing approximately 24 times per minute.

Petitioner then proceeded to trial on four counts of having a motion sign, four counts of having a flashing sign, and four counts of public nuisance. All counts related to his operation of an automatic changeable sign on four separate days, March 22, April 3, April 4, and April 5, 2002. The first sign, displayed on March 22nd, featured a message entitled "Walk in for better health," which the city asserted contained both motion and flashing. Appendix at App.68A.

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[7] Judge Kammeyer also dismissed, on technical pleading grounds, four other counts and refused to dismiss the "public nuisance counts. See also App.30-App.33

This led to a meeting between Petitioner and various city officials, where they disagreed about the meaning of the ordinance and Petitioner incredulously asked whether the ordinance would make it a crime for a sign to display a waving American flag. T.II 304-T.II 305.[8]

After receiving citations for the March 22nd sign and three days of showing a waving American flag, Petitioner ceased showing the waving American flag and purchased a new computer program showing an American flag not waving. Petitioner testified, without contradiction, that his was "the only non-waving on an LTD sign in the world," since the sign company had never had a request for such a sign (T.III 309). At the conclusion of the jury trial, the jury found Petitioner not guilty of the flashing sign counts, not guilty of the public nuisance counts, but guilty of violating the prohibition against "motion signs." T.II 442-T.II 444.

Petitioner's convictions were affirmed by the Minnesota

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[8] While there is some disagreement about the content of the conversations, two city officials admitted that Petitioner was specifically threatened with custodial arrest if he showed a sign with an American flag waving. T.II 166, T.II 204.

Court of Appeals, which upheld the validity of the "motion sign" prohibition. See ***State v. Dahl,*** 676 N.W. 2d 305(Minn. App. March 23, 2004). The Minnesota Supreme Court denied further review on June 15, 2004.

REASONS FOR GRANTING THE WRIT

I. THE DECISION REACHED BY THE MINNESOTA SUPREME COURT AND MINNESOTA COURT OF APPEALS, IN GRANTING VIRTUALLY ABSOLUTE DEFERENCE TO LEGISLATIVE JUDGMENT, UNSUPPORTED BY EVIDENCE AND CONTRADICTED BY ALL EVIDENCE IN THE RECORD, IS IN CONTRADICTION TO DECISIONS OF THIS COURT.

To be sure, the City of Fridley's total ban on "motion signs" is content neutral, and therefore is subject to intermediate scrutiny, whether as an incidental regulation of speech under ***United States v. O'Brien,*** 391 U.S. 367 (1968) or as a regulation of commercial speech under ***Central Hudson Gas & Electric Corp. v. Public Service Comm'n.,*** 447 U.S. 557 (1980).

Under ***O'Brien***,

> "[A] government regulation is sufficiently justified if it is within the constitutional power of government; it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

Assuming, as the District Court did, that the regulation is one of commercial speech, [9] the appropriate test is ***Central Hudson***, which provides that the First Amendment protects commercial speech only if that speech concerns lawful activity and is not misleading, if it seeks to implement a substantial governmental interest, directly advances that interest and reaches no further than necessary to accomplish its objective.

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[9] To say that the prohibition against "motion signs" is a regulation of commercial speech is not entirely accurate. The prohibition against "motion signs" applies regardless of whether the sign in questions commercial or non-commercial in nature. Therefore, it appears the *O'Brien* test to be the more appropriate one, especially with respect to Petitioner's criminal convictions for displaying a waving American flag. However, it is clear there is little, if any difference, between the *O'Brien* and *Central Hudson* tests. This petition will essentially use them interchangeably.

In upholding the validity of the restriction in question, both the Court of Appeals and the District Court relied upon the plurality opinion of this Court in ***Metro Media, Inc. v. City of San Diego,*** 450 U.S. 490, 508-509 (1977), which stated the following:

> "The more serious question, then, concerns the third of the *Central Hudson* criteria: does the ordinance 'directly advance' governmental interest in traffic safety and in the appearance of the city? It is asserted that the record is inadequate to show any connection billboards and traffic safety. The California Supreme Court noted the meager record on this point but held 'as a matter of law then an ordinance which eliminates billboards designed to be viewed from the streets and highways reasonably relates to traffic safety.' [Citation omitted.] Noting that '[b]illboards are intended to, and undoubtedly do, divert a driver's attention from the roadway,' [Citation omitted.] and whether the 'distracting effect contributes to traffic accidents invokes an issue of continuing controversy,' [Citation omitted.] The California Supreme Court agreed with many other courts that a legislative judgment that billboards are traffic hazards is not manifestly unreasonably and should not be set aside. We likewise hesitate to disagree with the accumulated, common-sense judgment of local

> lawmakers and many of the reviewing courts that billboards are real and substantial hazards to traffic safety. There is nothing here to suggest that these judgments are unreasonable. (Emphasis supplied)".

However, it is clear that majority opinions in several opinions subsequent to ***Metro Media***, whether applying the third prong of ***Central Hudson***, or the second prong of ***O'Brien***, have clearly abandoned the almost total deference to governmental judgment suggested in the plurality opinion of ***Metro Media***.

In ***Edenfield v. Fane***, 507 U.S. 761(1993), this Court, speaking of the government's burden under the third element of the ***Central Hudson*** test, stated:

> "This burden is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restrictions will in fact alleviate them to a material degree."[10]

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[10] In *Central Hudson* itself, this Court held that a regulation of commercial speech "may not be sustained if it provides only

In ***Rubin v. Coors Brewing Co.*** 514 U.S. 476 (1995), this Court declared that unless ***Edenfield's*** "critical" requirement is met, "a state could with ease restrict commercial speech in the service of other objectives that could not themselves justify a burden on commercial expression."

This substantially elevated burden of proof on the third element of ***Central Hudson*** and the second element of ***O'Brien*** has been relied upon by this Court to invalidate numerous additional restrictions on commercial speech. See for example, ***44 Liquormart, Inc. v. Rhode Island,*** 517 U.S. 484 (1996), in which the Court invalidated Rhode Island's restriction on liquor price advertising; ***Greater New Orleans Broadcasting Assoc., Inc. v. United States,*** 527 U.S. 173 (1999), in which the Court invalidated a federal statute prohibiting the

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ineffective or remote support for the government's purpose. 447 U.S. at 564.

advertisements of private casino gambling broadcast by radio or television stations located in states where such gambling is legal; and ***Lorillard Tobacco, Co. v. Reilly***, 533 U.S. 525 (2001), in which this Court, invalidated, under the First Amendment regulations promulgated by the Massachusetts Attorney General, prohibiting outdoor advertising of tobacco products within 1000 feet of schools or playgrounds, and providing that tobacco products could not be placed lower than five feet from the floor of any retail establishment located within a 1000 foot radius of any school or playground.

Instructive is the following language from ***Lorillard Tobacco***:

> "Massachusetts may wish to target tobacco advertisements and displays that entice children, much like a floor-level candy displays in a convenient store, but the blanket height restriction does not constitute a reasonable fit with that goal. The Court of Appeals recognized that the efficacy of the regulation

> was questionable, but decided that '[i]n any event, the burden on speech imposed by the provision is very limited.' [Citation omitted.] There is no de minimis exception for a speech restriction that lacks sufficient tailoring or justification." 533 U.S. at 567.

Judged by these standards, the failure of the city to meet its burden of proof under the ***O'Brien*** and ***Central Hudson*** tests is obvious. The city's evidence that the prohibition against "motion signs" will directly and materially advance its goal of traffic safety was not only insufficient; it was non-existent. Absolutely no evidence, be it testimonial, anecdotal, statistical or otherwise was submitted to the District Court to support the proposition that the restriction on motion signs, would in any way, advance the goal of traffic safety. Indeed, not a shred of evidence was offered to support the proposition that an American flag waving on an electronic sign is anymore distractive or hazardous to traffic than the identical flag flying on a flag pole. Indeed, the jury in the instant case answered the city's claim that it is advancing the interest of traffic safety clearly and unequivocally, when it acquitted Petitioner on every single count of public nuisance, requiring the state to prove that the use of the signs rendered a public highway "dangerous for passage..."

Plainly, the city's purported interest in traffic safety which supposedly justified the prohibition on motion signs, was based not upon the "accumulated, common-sense judgments of local lawmakers," as suggested by the plurality in ***Metro Media;*** rather it is nothing more than the rank "speculation and conjecture" condemned by the United States Supreme Court in ***Edenfield.***

Any doubt as to whether the Minnesota court erred in granting complete and blind deference to the legislative judgment as to whether the ban on motion signs advanced the public interest in traffic safety was removed by the most recent pronouncement of this Court in this regard, ***City of Los Angeles v. Alameda Books, Inc.,*** 535 U.S. 425 (2002), in which this Court applied an intermediate scrutiny test to an ordinance regulating the zoning of adult entertainment.

In discussing the evidence required to establish that the regulation in question advanced a substantial governmental interest, the same test involved in both ***O'Brien*** and ***Central Hudson***, the plurality of this Court, in an opinion written by Justice O'Connor wrote the following:

> "In *Renton*,...[w]e held that municipality may rely on any evidence that is 'reasonably believed to be relevant' for demonstrating a connection between speech and a substantial, independent government interest [Citations omitted.] This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If Plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the

> municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in *Renton*. If Plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance." [Citation omitted.] Id. at 438-439.[11]

Judged by this test, the city's proof is even more inadequate. To begin with, as already noted above, the total absence of any evidence whatsoever to support the city's "traffic safety" interest should preclude the city from even getting to first base under the ***Alameda Books*** test.

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[11] To be sure, this standard clearly represents only the stated view of only four justices, to-wit: Justice O'Connor, Chief Justice Rehnquist, Justice Scalia and Justice Thomas. However, it is clear that the four dissenting Justices, Souter, Stevens, Ginsburg, and Breyer, would require a far more stringent evidentiary showing on the part of government: See for example, Id. at 458-460, Souter J. dissenting. Consequently, it is clear that the foregoing quotation from the plurality opinion represents the bare minimum which a majority of the United States Supreme Court would require in order to justify an adult entertainment regulation premised on a secondary effects theory. It is clearly the standard which now governs the instant case.

Secondly, and more significantly, Petitioner in the instant case submitted substantial and compelling evidence which clearly cast doubt on the city's rationale. This included letters from two different municipalities, plainly indicating that they had no evidence whatsoever that moving signs had any adverse effects on traffic safety,[12] two communications from the United States Department of Transportation, one indicating that automatic changeable signs meet federal requirements, and the other indicating that research on traffic safety is inconclusive;[13] evidence that during a one-year period in a location extremely close to Appellant's location that there were fewer traffic accidents in the six months after a moving readerboard sign was installed than there were in the six preceding months;[14] that the City of Mounds View installed a moving message center at its own City Hall, resulting in a reduction of traffic accidents; [15] and that transportation departments throughout the United States, including the Minnesota Department of Transportation near the Lowry Hill tunnel, use moving changeable signs to enhance traffic safety.[16] Plainly, in the light of all of this uncontradicted evidence that the regulation does absolutely nothing to enhance the goal of traffic safety, even assuming the city had produced the minimal evidence necessary to sustain its initial burden, Petitioner's evidence plainly cast doubt upon the city's conclusion and shifted the burden to the city to come forward with evidence to justify its conclusion, under ***Alameda Books***. It plainly failed to do so, and that failure should result in the invalidation of the ordinance in question.

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[12] App.127-App.128.

[13] Id. at App.116-App.119

[14] Id. at App.134-App.135

[15] Id. at App.136.

Finally, it should be noted that even if the city had established that its prohibition against "motion signs" advanced a significant governmental interest in a direct and substantial way, it would still bear the burden of showing, under either ***Central Hudson*** or ***O'Brien***, that the ordinance restricted no more speech than necessary to advance its interest. In discussing this final prong of ***Central Hudson***, this Court in

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[16] Id. at Ap.137-App.138.

New Orleans Broadcasting stated the following:

> "The government is not required to employ the least restrictive means conceivable, but it must demonstrate narrow tailoring of the challenged regulation to the asserted interest - 'a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served.' [Citations omitted.]
>
> On the whole, then, the challenged regulation should indicate that its proponent 'carefully calculated the costs and benefits associated with the burden on speech imposed by its prohibition.' [Citation omitted.]"

There is not the least indication that the City of Fridley has made the slightest effort to "carefully calculate" the costs and benefit associated with the burden on speech imposed by this ordinance. Indeed, if it had, there is no way it could reasonably have concluded that its interest in traffic safety could conceivably justify criminalizing a sign showing a flying American flag.

II. IN ADDITION TO BEING CONTRARY TO DECISIONS OF THIS COURT, THE MINNESOTA COURTS ARE IN CONFLICT WITH DECISIONS FROM

OTHER STATE COURTS AND LOWER FEDERAL COURTS.

In granting complete deference to the legislative judgment that the prohibition in question advanced the state's interest in traffic safety, the Minnesota Supreme Court acted in a manner contrary to the decision of the highest appellate court in the State of New Jersey in ***State v. Calabria Gillette Liquors***, 301 N.J. Super. 96, 693 A. 2d 949 (1997), in which the court invalidated an obviously content-neutral ban on neon signs, holding that, under ***Central Hudson***, the city had failed to make an evidentiary showing that the prohibition advanced the city's

stated goal of aesthetics. The court stated:

> "[T]here must be shown a factual basis for a particular regulatory scheme, namely, a reason for a total municipal-wide ban. A record cannot be devoid of evidence of how a ban advances the interest of aesthetics. [Citation omitted.]
>
> The record is devoid of evidence, facts or analysis why the mere existence of neon is offensive to that goal. There is no evidence that there are unusual problems and the use of neon

> that cannot otherwise be regulated as other forms of lighting, specifically, as to degree of illumination; amount of light used within a given space or size of structure; direction of the light; times when the light may be used; or the number of lights used on the interior of the store. Mr. Tobia's testimony was purely conclusory, with no factual or explanatory basis of why neon, in and of itself cannot otherwise be regulated as other forms of illumination, to meet the aesthetic standard for a township." 693 A. 2d at 954.

Likewise, in ***Horizon Outdoor v. City of Industry, Cal.***, 228 F. Supp. 2d 1113 (C.D. Cal. 2002), the court invalidated a municipal ordinance prohibiting off-site advertising within specified distance of major roads, holding, that the restriction violated the First Amendment. The court found that notwithstanding the fact that the city had identified an interest in aesthetics and traffic safety which other courts have found substantial, the city had failed to meet the third prong of ***Central Hudson***, namely that the restriction advanced those interests, stating the following:

> "Mr. Kissel's declaration asserts that '[o]ff-premises signs...were prohibited to...promote the City's interest in health, safety, welfare and aesthetics...' [Citation omitted.] But neither Mr. Kissel nor Defendant cite to any reports or studies or other evidence indicating that the ban actually serves those interests. For example, the city has not presented any statistics indicating that the number of accidents on the stretch of Interstate of 60 in the City has declined along with a number of billboard along that route (footnote omitted). *Edenfield v. Fane*, 507 U.S. 761, 770-771 113 S. Ct. 1792, 123 L. Ed. 2d 543 (1993) ('This burden is not satisfied by mere speculation or conjecture...'). Accordingly, the City has not met its burden on the third prong of *Central Hudson*, that the Sign Ordinance directly advances the City's interest." Id. at 1126-1127.[17]

In this regard, see also ***Dimmitt v. City of Clearwater***, 985 F. 2d 1565 (11th Cir. 1993); ***Flying J. Travel Plaza v.***

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[17] In this regard, it should be noted that the court reached exactly the opposite conclusion on the identical issue discussed by the *Metro Media* plurality. Obviously, the difference was the heightened scrutiny on the third prong of *Central Hudson* adopted by majorities of the United States Supreme Court in *Edenfield* and its progeny.

Commonwealth, 928 S.W. 2d 344 (Ky. 1996); and ***In Re: Gerald B. Deayo,*** 670 A. 2d 793 (Vt. 1995), which, although invalidating content-based regulations, also stressed the "meager evidence" tendered to support any relation between the regulation in question and the advancement in safety.

Indeed, it is clear that the decisions of this Court and other courts across the country heightening the scrutiny given to the question of whether a governmental regulation of First Amendment protected activity advances an important governmental interest will be seriously undermined if, the Minnesota Courts have declared, all government needs to do is shout the mantra of "traffic safety" and courts will turn a blind eye toward the regulation.

CONCLUSION

It is absolutely clear that, under the decisions of this Court, had the Petitioner in this case, as a matter of protest, decided to burn the American flag in his parking lot, the First Amendment would absolutely have protected him from prosecution therefor. See ***Texas v. Johnson,*** 491 U.S. 397 (1989), and ***United States v. Eichman,*** 496 U.S. 310 (1990). It would clearly be intolerably anomalous to suggest that the First Amendment did not equally protected his right to show a sign displaying waving American flag, especially when all of the evidence in the record clearly indicates that the prohibition of his doing so did absolutely nothing to advance any legitimate governmental interest.

For all of these reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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Dated: September 10, 2004

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STATE OF MINNESOTA IN SUPREME COURT

JUN 15 2004

FILED

State of Minnesota,

Respondent,

vs.

Wayne Earl Dahl,

Petitioner.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED the petition of Wayne Earl Dahl for further review be, and the same is, denied.

Dated: June *15*, 2004

BY THE COURT:

App1

STATE OF MINNESOTA
IN COURT OF APPEALS
A03-375

State of Minnesota,

Respondent,

vs.

Wayne Earl Dahl,
Appellant.

Filed March 23, 2004
Affirmed
Robert H. Schumacher, Judge

Anoka County District Court
File No. TX0213083

Mike Hatch, Attorney General, 1800 NCL Tower, 445 Minnesota Street, St. Paul, MN 55 101-2134; and

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Randall D.B. Tigue, Randall Tigue Law Office, P.A., 100

App2

Minnehaha Professional Building, 3960 Minnehaha Avenue
South, Minneapolis, MN 55406 (for appellant)

Considered and decided by Schumacher, Presiding Judge; Willis, Judge; and Wright, Judge.

SYLLABUS

A content-neutral provision of law enacted to further a substantial governmental interest without entirely foreclosing a means of communication is valid so long as the legislative body reasonably determined its goal, would be less effectively achieved without the provision.

OPINION

ROBERT H. SCHUMACHER, Judge

Appellant Wayne Earl Dahl challenges his conviction of violating Fridley, Minn., City Code § 2 14.04.6 (2002), which prohibits the use of "motion signs" throughout Fridley He argues the ordinance is facially unconstitutional under the First Amendment of the United States Constitution. We conclude the ordinance is a valid time, place, or manner regulation under the test set out in *Ward v. Rock Against Racism,* 491 U.S. 781, 109 S. Ct. 2746 (1989). We also conclude the evidence was not "insufficient as a matter of law," and because the issue. was not properly raised before this court, we decline to address Dahl's argument that the trial court erred in excluding a defense witness. We affirm.

FACTS

Dahl operates a chiropractic clinic on the corner of Osborne Road and Highway *65* in Fridley. For many years he displayed an alternating "time and temperature" sign on top of a traditional, flat advertising sign at his clinic. Between December 2000 and January 2001, Dahl decided he wanted an automatic changeable sign "so that we could provide public service messages, et cetera."

The Fridley city clerk has certified that the provisions of the city code cited in this opinion were in effect in 2002 during the events at issue. We have relied on the certification by the city clerk and refer to all provisions as though actually issued in 2002.

In early 2001, Dahl applied for, and Fridley granted him, a special use permit to operate an automatic changeable sign. Under Fridley, Minn., City Code 214.07.1.A (2002), the special use permit is issued subject to "[c]onformance to the sign requirements within that district." Fridley, Minn., City

Code § 214.04.6, which prohibits the use of "motion signs," applies to all districts within Fridley. Scott Hickok, Fridley's community development director, testified that Dahl had obtained a special use permit to operate an automatic changeable sign, but the special use permit was granted upon the conditions that (1) the sign be operated within all of the confines of the law, (2) a building permit be obtained, and *(3)* the sign be constructed in accordance with the law. Hickok is responsible for enforcing Fridley's city code.

Dahl's new sign was installed in late December 2001. Dahl testified he initially let the sign sit blank because he was unsure what the sign could display. In March 2002, Dahl turned the sign on, displaying the message "Walk In For Better Health," accompanied by flickering snowflakes. That evening, Sergeant Crestik of the Fridley police issued Dahl two citations for violating Fridley's sign ordinances.

On Monday morning, Dahl contacted Hickok to discuss his situation. Dahl attended a meeting that day with Hickok, the city attorney, and Paul Bolin. Dahl testified that at this meeting the city told him the citations had been issued because the snowflakes "flash[ed]" and that when the message spread apart before changing, the sign created the illusion of motion and therefore violated the city's sign ordinances.

At this meeting, the discussion moved from the message that was displayed to whether Fridley would cite Dahl for displaying a waving American flag. Dahl testified that he was told, "If you [display the flag] we want to know when you're going to do it because we don't want the police to have to be on over-time when they arrest you." Dahl then countered with, "How about seven o'clock on Thursday night?" Hickok, however, testified to a very different version of the flag discussion. He testified, Fridley's statement was, "The American flag is fine, but don't run contrary to those two elements that have been discussed." Hickok testified that Dahl responded, "I'm going to turn it on. As a matter of fact, let me give you the date and time .... And if the city doesn't want to change the code, I will embarrass them into doing so."

At approximately 7 p.m. on Thursday, April 3, 2002, Dahl turned on the sign displaying a waving American flag. He was issued a citation for violating the sign ordinances. He was also issued additional citations thereafter.

The city charged Dahl with four counts of violating Fridley, Minn., City Code § 214.04.6 for operating a sign displaying motion, four counts of violating Fridley, Minn., City Code § 214.04.4 (2002) for operating a sign that caused traffic distraction, four counts of violating Fridley, Mimi., City Code § 2 14.04.7 (2002) for operating a sign using flashing lights, four counts of violating Fridley, Minn., City Code § 214.07.1(2002) for operating a sign with messages changing more than every 15 minutes, and four counts of violating Minn. Stat. § 609.74, Subd. 2 (2000), for operating a sign that caused a distraction that endangered or harmed passing motorists. Dahl moved to dismiss the complaint, and the trial court issued an order dismissing the charges for distracting traffic under Fridley, Minn., City Code § 214.04.4 and the charges for operating a sign with messages changing more frequently than 15 minutes under Fridley, Minn., City Code § 214.04.07.1.

The case proceeded to trial on the charges of displaying a motion sign and a flashing sign under city ordinances, and endangering or harming motorists under Minn. Stat. § 609.274. The jury found Dahl not guilty of displaying a flashing sign and not guilty of causing a distraction that endangered or harmed passing motorists but found him guilty of displaying a motion sign. The court sentenced Dahl on all four counts of displaying a motion sign to identical, concurrent sentences of 30 days in jail, stayed, and a $700 fine, $300 of which was stayed.

ISSUE

Is a city ordinance that prohibits operating signs that revolve, rotate, have moving parts, or give the illusion of motion an unconstitutional abridgement of the freedom of speech?

ANALYSIS

Dahl argues the motion sign ordinance violates the First Amendment to the United States Constitution. Evaluating the constitutionality of a statute is a question of law, which this court reviews de novo. *Hamilton v. Comm 'r of Pub. Safety,* 600 N.W.. 2d 720, 722 (Mimi. 1999).

Under Fridley city code, a "motion sign" is a "sign which revolves, rotates, has moving parts or gives the illusion of motion." Fridley, Minn., City Code § 2 14.02.19 (2002). Another provision of the code lists signs that are prohibited in all districts of the city. Fridley, Minn., City

Code § 214.04 (2002). Included in the list of prohibited signs are "[any motion signs." Fridley, Minn., City Code § 214.04.6.

The First Amendment provides that "Congress shall make no law ...abridging the freedom of speech." U.S. Const. amend. I. The freedom of speech clause applies to the states through the Fourteenth Amendment. 44 *Liquormart Inc. v. Rhode Island,* 517 U.S. 484, 489 n.l, 116 S. Ct. 1495, 1501 n.l (1996). Provisions of law that regulate a medium of communication, such as the posting of signs, often affects speech and are subject to first amendment scrutiny. *See, e.g., City of LaDue* v. *Gilleo,* 512 U.S. 43, 48, 114 S. Ct. 2038, 2042 (1994) (stating "because regulation of a medium inevitably affects communication itself, it is not surprising that we have had occasion to review the constitutionality of municipal ordinances prohibiting the display of certain outdoor signs").

If a provision seeks to limit when, where, or how means of expression may be used, it is analyzed to determine if it is a valid "time, place, and manner" regulation. *Hill v. Colorado,* 530 U.S. 703, 725-26, 120 S. Ct. 2480, 2494 (2000). A provision of law that regulates the time, place, or manner of protected speech must be narrowly tailored to serve the government's substantial and content-neutral interests while leaving open ample alternative channels, but the regulation need not be the least restrictive or least intrusive means of doing so. *Ward v. Rock Against Racism,* 491 U.S. 781, 797-803, 109 S. Ct. 2746, 2757-60 (1989); *see*

Hill, 530 U.S. at 725, 120 S. Ct. at 2494 (holding statute was valid time, place, and manner regulation "under the test applied in *Ward").*

The Fridley motion-sign ordinance serves the government's substantial and content-neutral interest and leaves open ample alternative channels. The prohibition of motion signs does not disfavor any message and therefore is a content-neutral regulation.

See Ward, 491 U.S. at 791, 109 S. Ct. 2746 at 2754 (stating "principle inquiry in determining content neutrality ...in time, place, or manner cases ...is whether the government has adopted a regulation of speech because of disagreement with the message it conveys"). Fridley's goal in prohibiting motion signs is to promote traffic safety by limiting driver distractions, which is unquestionably a substantial government interest. *See Metromedia, Inc. v. City of San Diego,* 453 U.S. 490, 507-8, 101 S. Ct. 2882, 2892-93 (1981) (stating it "is far too late to contend" traffic safety is not a substantial government interest) 2

Finally, the regulation leaves open ample alternative channels because it allows any speech on a sign that does not revolve, rotate, have moving parts, or give the illusion of motion. *See Ward,* 491 U.S. at 802, 109 5. Ct. at 2760 (concluding regulation limiting sound amplification at Central Park Bandshell "easily met" ample alternatives requirement where "the guideline continues to permit expressive activity in the bandshell, and has no effect on the quantity or content of that expression beyond regulating the extent of amplification").

In examining whether a time, place, or manner regulation is narrowly tailored to serve the government interest there is a crucial distinction to be made when the regulation "does not entirely foreclose any means of communication." *Hill,* 530 U.S. at 726, 120 S. Ct. at 2494. When a regulation does not foreclose the means of communication, "the

[2] Contrary to Dahl's contention, parts I through IV of *Metromedia* express the opinion of a majority of the Supreme Court. *See Metromedia,* 453 U.S. at 540-41, 101 S. Ct. at 2909-10 (Stevens, J., dissenting in part) (joining Parts I through IV); *City of LaDue,* 512 U.S. at 49 n.8, 114 S. Ct. at 2042 n.8 (noting five Justices joined in Part IV).

requirement of narrow tailoring is satisfied so long as the regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward,* 491 U.S. at 799, 109 S. Ct. at 2758 (quotation omitted). Where a legislative body has made a reasonable determination that its legitimate interest would be served less effectively without the regulation the courts should defer to that decision. *See id.* 491 U.S. at 800, 109 5. Ct. at 2758 (stating it is not court's prerogative to replace its judgment for "the responsible decision maker concerning the most appropriate method for promoting significant government interests or the degree to which those interests should be promoted" (quotation omitted)); *Hill,* 530 U.S. at 727, 120 S. Ct. at 2495 (where regulation does not foreclose means of communication, court "must accord a measure of deference to the judgment" of legislative body).

Here, the city code only prohibits the manner in which signs can operate. It does not prevent use of signs as a means of communication; any message can be displayed on a sign as long as the sign does not revolve, rotate, use moving parts, or give the illusion of motion. Fridley determined that its legitimate goal of preventing traffic accidents would be served less effectively if motion signs were not prohibited. We see no reason to conclude such a common-sense determination is unreasonable, and therefore we defer to Fridley's decision to prohibit motion signs in order to promote traffic safety.

Dahl also argues that the evidence was "insufficient as a matter of law" to support his conviction for operating a motion sign because Fridley had granted him a special use permit to operate an automatic changeable sign and it is "physical[ly] impossible to change the message on an automatic changeable sign without engaging in what the sign ordinance would deem 'flashing' or 'motion.'" Under the ordinance that allowed the city to issue the special use permit, the permit is issued subject to "[c]onformance to the sign requirements within that district." Fridley, Minn., City Code 2. 14.07.1 .A. Since the prohibition against motion signs applies throughout Fridley, a special use permit for an automatic changeable sign does not excuse the grantee from the prohibition against motion signs.

Dahl also argues he is entitled to a new trial because "it was plain error to exclude the testimony of [a witness]." Since he provides no legal argument or authority and we see no obvious prejudicial error, we deem this issue waived. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating assignment of error in brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection).

DECISION

The Fridley city ordinance prohibiting motion signs does not violate the First Amendment. The evidence is sufficient to support Dahl's conviction.

Affirmed.

STATE OF MINNESOTA
DISTRICT COURT
COUNTY OF ANOKA
TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

Order granting in part and denying in part Defendant's motion to dismiss the complaint

-vs.
Wayne Earl Dahl,
Defendant.

SYNOPSIS OF THE CASE AND OF THE COURT'S RULINGS

In this case, defendant Wayne Dahl is charged with many counts -20 in all -- of violating the City of Fridley's Sign Code and a state public nuisance statute. Those charges stem from defendant Dahl 's operation of an electronic readerboard or automatic changeable sign on his business - property at the intersection of Osborne Road and Highway *65* in the City of Fridley on four different dates: 3/22/02, 4/3/02, 4/4/02, and 4/5/02.

The case was the subject of a hearing on ***8/13/02*** pursuant to defendant Dahls motion to dismiss all of the

Counts, based on First Amendment constitutional challenges and/or objections having to do with technical pleading requirements.

By this Order, the Court finds that one of the City's Sign Code provisions is unconstitutional, namely: the provision that prohibits changing the message on such an automatic changeable sign more than once every 15 minutes. *Accordingly, the Court dismisses Counts Four, Nine, Fourteen, and Nineteen which are charged under that 15-minute provision of the Code.* The Court also finds that there is a technical pleading deficit in the Counts that charge a violation of another provision of the Sign Code which purportedly prohibits operating a sign that causes a "traffic distraction." *Accordingly, the Court dismisses Counts Two, Seven, Twelve, and Seventeen which charge that purported "traffic distraction" offense under the Code.* The Court denies defendant's motion to dismiss the other 12 Counts which charge violations of "motion sign" and "flashing sign" provisions of the City's Sign Code and violations of a state "public nuisance" statute.

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FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case is about defendant Wayne Dahl's sign, a specific kind of sign variously referred to as an "automatic changeable sign" or an "electronic readerboard." The case is also about the City of Fridley's Sign Code that regulates all signs in the City, including defendant Dahl's sign. Finally and most importantly, the case is about the First Amendment's freedom of speech and the interplay between the Amendment, the City's Sign Code, and defendant Dahl's sign.

Defendant Dahl is a chiropractor, doing business at a clinic-building called "Spine Care Specialists" at the southeast corner of a busy, well-trafficked intersection in Fridley

Highway 65 and Osborne Road. Sometime in early 2001, Dam purchased an electronic readerboard, manufactured by Daktronics, Inc. for $80,000. Defendant Dam mounted the readerboard on two columns on his property so that it sits elevated about 10-12 feet off the ground, easily visible to motorists northbound and southbound on Highway 65.

This readerboard is, apparently, a state-of-the-art outdoor messaging surface, capable of displaying all kinds of information and images in various formats. It can display printed messages and graphic images, complete with simulated motion and flashing lights.

Defendant Dahl's electronic readerboard is regulated by the City of Fridley's Sign Code. More specifically, the Code permits automatic changeable signs in the City, but only after the City's issuance of a special use permit. Accordingly, starting early in 2001 in connection with his purchase of the

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readerboard, defendant Dahl sought and obtained a special use permit from the City. But, more significantly thereafter in 2001, he sought either a variance or an outright zoning amendment of the Sign Code's provision that any message on the sign must not change more than once every 15 minutes, except for time, temperature, and/or date. Defendant Dahl 's efforts (to get a variance or to have the City amend the 15-minute provision) carried on from February through July 2001 at public hearings before the City's Variance Appeal Board, the Planning Commission, and the Council itself Those efforts proved unsuccessful. The City granted him no variance from the Code's 15-minute requirement and denied his petition to amend the 15-minute Code provision.

So the matter stood in July 2001. What happened during the next nine months isn't entirely clear. But, apparently during those nine months from July 2001 to March 2002, defendant Dahl abided by the City's Sign Code generally and the 15-minute provision particularly.

Then, in late March and early April of 2002, defendant Dahl decided to deliberately violate the 5-minute provision of the Code by having the readerboard display a rapidly-changing message - "Why Wait? Walk in for Better Health." He also deliberately violated another provision of the Sign Code that prohibits "motion signs" by having the readerboard project simulated images of animated snowflakes and waving American flag. He did that on four separate dates, as alleged in the Complaint: March 22, 2002 and then for three consecutive days on April 3, 4, and 5. Here's how the Complaint, in its probable cause portion, describes those four incidents:

> On or about 3/22/02, Dahl turned the sign on to display time, temperature, and two separate messages advertising Dahl's chiropractic business, as well as animated snowflakes. The sign was displaying nearly constant motion, flashing and the messages

were appearing at intervals substantially less than every 15 minutes. Dahl received a citation for violating the City sign code and later met with City staff where the provisions of the City's ordinances were again explained to him. On that day, and subsequently when the sign was on, City staff observed vehicles slowing down and even pulling off the road, clearly distracted by the sign.

- On or about 4/3/02, Dahl once again turned on the sign, which again showed motion, and was flashing. Dahl was issued citations for violations of three separate provisions of the sign ordinance.
- On or about 4/4/02, the sign was turned on approximately 8:50 a.m., showing a waving flag with motion and flashing. Dahl was issued additional citations.

- On or about 4/5/02, at approximately 7:43 a.m, the sign was turned on to, once again, display with motion a representation of a flag, as well as a text message. Once again Dahl was cited for the manner in which the sign was being used in violation of the City's regulations.

In its charging portion, the Complaint charged defendant Dahl with 20 counts - the same 5 offenses for each one of the 4 days. Those 5 offenses, repeated for each one of the 4 days, are operating a sign:

- displaying motion
- that caused traffic distraction
- using flashing lights
- with message changes more frequent than every 15 minutes
- in such a manner as to cause a distraction which endangered or harmed passing motorists on Highway *65* [thereby creating a public nuisance]

The last offense - public nuisance - is discharged under a state statute, Minn. Stat. §609.74(2). The first four offenses are all charged under various provisions of the City's Sign Code, Chapter 214.

Defendant Dahl, by his present broad-based motion, seeks dismissal of all 20 counts, based on a mix of constitutional challenges and objections having to do with technical pleading requirements.

To more readily visualize and organize the Complaint's repetitive pattern of charging, we set forth on the next page what amounts to a "scorecard" of the 5 charged offenses, repeated for each of the 4 offense-dates. Our scorecard recites the Sign Code section or state statute section for each of the 5 charged offenses. Already on the scorecard, we have X-ed out the offenses and counts we have dismissed, pursuant to defendant Dahl's motion. We dismissed Counts Two, Seven, Twelve, and Seventeen because of a technical pleading deficit pointed out by defendant Dahl in the Complaint's charging of the (purported) Code violation of "operating a sign that caused traffic distraction." We dismissed Counts Four, Nine, Fourteen, and Nineteen because we agree with defendant Dahl's contention that the Code provision on which those counts are based is unconstitutional, namely, the Code provision that prohibits any message on an automatic changeable sign from changing more than once every 15 minutes, except for time, temperature, and/or date.

DISCUSSION

I. TECHNICAL PLEADING DEFICITS

Defendant Dahl seeks dismissal of some of the Counts because of technical pleading deficits in the Complaint's charging of those Counts. More specifically, he argues that the Complaint fails to charge an offense under Sign Code §214.04.4 *(traffic distraction)* and Minn. Stat. §609.74(2) *(public nuisance).* Defendant Dahl also argues that, for some Counts, the Complaint fails to allege sufficient facts to enable a neutral and detached magistrate to find probable cause to believe that defendant committed an offense.

In this first part of the Discussion, we discuss those two bases (failure to charge an offense and lack of probable cause) for dismissing some of the Counts. For those Counts that survive these initial challenges, we will then go on in the second part of our Discussion to discuss the constitutional validity of the underlying municipal ordinances.

A. **Failure to Charge an Offense**

Defendant Dahl argues that the Complaint fails to charge an offense under Sign Code §214.04.4 *(traffic distraction)* and Minn. Stat. §609.74(2) *(public nuisance).* For an explanation of the requirements of criminal pleading in Minnesota, defendant Dahl cites ***State v. Reynolds,***

> set forth the facts constituting the same. (citation omitted.)

We will test the sufficiency of the Complaint under the *Reynolds* standard for criminal pleading.

1. Fridley Sign Code Sec. 214.O4.4 (Traffic Distraction)

In Counts Two, Seven, Twelve, and Seventeen of the Complaint, defendant Dahl is charged with violating Sign Code §214.04.4, which prohibits "any signs which by reason of size, location, movement, content, coloring or manner of illumination may be confused with the light of an emergency or road equipment vehicle, a traffic sign, signal or device or which hides from view any traffic sign, signal or device." The Complaint only alleges that defendant Dahl "did operate a sign that caused traffic distraction." Since the pleader did not allege the offense in the language of the statute (here, the Sign Code), we turn to the facts set forth by the State to see if those facts constitute the offense charged. In his police report for the 3/22/02 incident, Sgt. Rick Crestik reported:

> I noticed the sign to be bright and distracting, as I had approached the business as far away as 68th Ave. Hwy. *65.* I also noticed a few cars in traffic slow as they drove by even though they were approaching the intersection of Hwy. *65* and Osborne Rd. on a green light. Mr. Hickok [Fridley Community Development Director]

> I noticed the sign to be bright and distracting, as I had approached the business as far away as 68~ Ave. Hwy. 65.. I also noticed a few cars in traffic slow as they drove by even though they were approaching the intersection of Hwy. 65 and Osborne Rd. on a green light. Mr. Hickok [Fridley Community Development Director] advised me that while they were waiting for my arrival, he saw several cars pull onto the shoulder in front of the sign while the driver read it.

This report is the only police report that describes the distracting nature of the sign. Sgt. Crestik did not report observing defendant Dahl's sign being confused with the light of an emergency or road equipment vehicle or a traffic sign, signal or device. The cars were pulling over onto the shoulder to *read* the message on defendant Dahl's sign not to *obey* the sign as if it were a traffic sign or to *heed* it as if it were an emergency vehicle. Since the State failed to either charge the offense in the language of the Sign Code or to specifically set forth the facts constituting the offense, we dismiss Counts Two, Seven, Twelve, and Seventeen of the Complaint.

2. Minn. Stat. Sec.609.74(2) (Public Nuisance)

In Counts Five, Ten, Fifteen, and Twenty of the Complaint, defendant Dahl is charged with violating Minn. Stat. §609.74(2), which provides:

> Whoever by an act or failure to perform a legal duty

> intentionally does any of the following is guilty of maintaining a public nuisance, which is a misdemeanor: (2) interferes with, obstructs or renders dangerous for passage, any public highway or right-of-way, or waters used by the public...

The Complaint charges defendant Dahl with "operat[ing] a sign in such a manner as to cause a distraction which endangered or harmed passing motorists traveling on Highway *65.*" Defendant Dahl argues that he has not been charged in the language of the statute. However, we read the Complaint as charging defendant Dahl with "rendering [Highway *65]* dangerous for passage" by operating a sign that causes a distraction. Since we read the Complaint as being written in the language of the statute, Counts Five, Ten, Fifteen and Twenty are sufficient under the *Reynolds* test and, accordingly, are not dismissed.

B. **Lack of Probable Cause**

In addition to questioning the charging of some of the offenses, defendant Dahl also argues that the Complaint fails to allege sufficient facts to enable a neutral and detached magistrate to find probable cause to believe that defendant committed an offense. The Rules say the following about such probable cause dismissal motions:

> The court shall hear and determine all motions made by the defendant..., including a motion that there is an insufficient showing of probable cause to believe that the defendant committed the offense charged in the complaint, and receive such evidence as may be

Both parties agree that the function of a complaint is to give the criminal defendant notice of the charges against him as required by the Fourth Amendment to the U.S. Constitution. Both parties also agree that to establish probable cause, the prosecution must make a sufficient showing that a crime has been committed and that the defendant committed it. The issue is whether the State has made that sufficient probable cause showing.

The thrust of defendant Dahl 's argument that the State did not establish probable cause is twofold. In his first probable cause argument, defendant Dahl argues that "to the extent that any 'motion' or 'flashing' in defendant's signs is inherent in a changeable reader board sign, the conduct alleged does not constitute an offense." Def. 's Memo at 24. In other words, defendant Dahl is arguing here that, because he was granted a special use permit to operate the "automatic changeable sign", he must - of necessity -have also been granted the right to use the "motion" and "flashing" features which are integral to operating an "automatic changeable" sign in the first place.

Admittedly, automatic changeable signs, such as defendant Dahl's, have the capability of displaying motion and flashing. These signs are expressly permitted in Fridley with a special use permit, and defendant Dahl did obtain such a special use permit to install and use an automatic changeable sign. However, Sign Code §214.07 expressly provides that "issuance of a special use permit [is] subject to..

conformance to the sign requirements within that district..." Therefore, when the City granted defendant Dahl a special use permit to install and use an automatic changeable sign, it was with the understanding that he would not use it to display motion or flashing. Therefore, the grant of a special use permit for the sign did not eliminate his duty to obey other sections of the City's Sign Code, including the prohibition of motion and flashing.

Defendant Dahl's second probable cause argument is that the Complaint fails to allege sufficient facts to enable a detached magistrate to independently judge whether the crimes charged were actually committed. Defendant Dahl focuses his analysis on the allegations in the probable cause portion of the Complaint. He finds those allegations insufficient because they have a "conclusory" tone. However, as noted above, a finding of probable cause shall be based upon the entire record including reliable hearsay in whole or in part. Based upon the entire record in this case, including the police reports and videotapes

In Counts One, Six, Eleven and Sixteen of the Complaint, defendant Dahl is charged with violating Fridley Municipal Code Section 2 14.04.6, which prohibits "any motion signs:" Fridley Municipal Code Section 2 14.02.19 defines "motion sign" as "a sign that revolves, rotates, has moving parts or gives the illusion of motion." In Counts Three, Eight, Thirteen and Eighteen of the Complaint, defendant Dahl is charged with violating Fridley Municipal Code Section 2 14.04.7, which prohibits "any flashing signs." Section 2 14.02.13 of the Fridley Municipal Code defines "flashing sign" as "an illuminated sign which has intermittent flashing lights, revolving beacons, zip flashers or exhibits a noticeable change in color or light intensity."

of defendant Dahl's sign, we find that the State has made a sufficient showing to enable a neutral and detached magistrate to find probable cause to believe that defendant committed the offenses charged.

H. THE CONSTITUTIONAL VALIDITY OF THE FRIDLEY SIGN ORDINANCES

Because of technical pleading deficits, we dismissed only the 4 Counts that are based on Sign Code §214.04.4 *(traffic distraction).* That leaves the rest of the Counts based on other Sign Code provisions, and the Counts based on the state public nuisance statute, Minn.Stat. §609.74(2). Defendant Dahl's constitutional challenges attack only those remaining Counts based on the Sign Code provisions. He does not launch any constitutional attack against the state public nuisance statute which, accordingly, is not addressed in this second part of the Discussion.

Our discussion of defendant Dahl's constitutional challenges to the Sign Code has two sections. Section A covers (what defendant claims to be) a *content-based* regulation in the Code, while Section B covers what defendant concedes are only *content-neutral* regulations in the Code. More specifically, in Section A we discuss the Code's content-based prohibition against automatic changeable signs changing their message more than once every 15 minutes, §214.07.1. Then, in Section B we discuss the Code's content-neutral prohibitions against automatic changeable signs' display of "motion" and "flashing", §2l4.04.6 and 2 14.04.7.

A. The Content-Based Regulation: The 15-Minute Timing Prohibition

In Counts Four, Nine, Fourteen and Nineteen of the Complaint, defendant Dahl is charged with violating Sign Code §214.07.1, which provides:

> Automatic changeable signs are permitted in all districts except residential districts, and then only after the issuance of a special use permit subject to the following minimum conditions:
>
> A.. Conformance to the sign requirements within that district
>
> B. The message shall not change more than once every fifteen (15) minutes except for a sign displaying time, temperature and/or date.

Section 2 14.02.9 of the Sign Code defines an "automatic changeable sign as an electronic ally controlled sign, including time, temperature, or date sign, or message center or reader board, where different message changes are shown on the same panel."

Defendant Dahl claims that Sign Code §214.07.1 violates the First Amendment to the U.S. Constitution. In order to determine the appropriate standard of constitutional review, we must first decide what kind of speech is regulated by 2 14.07.1. Both defendant Dahl and the State agree that 2 14.07.1 regulates commercial speech. There are two standards of review for statutes (and ordinances) that regulate commercial speech. There is one standard for regulations that are *content-based* and another standard for those that are *content-neutral:*

> For the State to enforce a content-based exclusion it must show that its regulation. is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. . .The State may also enforce regulations of the time, place, and manner of express which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

Perry Education Association v. Perry Local Educators' Association, 460 U.S. 37, 45 (1983) (citations omitted).

Since the standard of review for an ordinance that regulates commercial speech depends on whether the regulation is content-based or content-neutral, the next question is whether Sign Code 2 14.07.1 is a content-based or content-neutral regulation. Defendant Dahl argues that 214.07.1 is content-based because messages displaying time, temperature and/or date are exempted from its reach. Therefore, according to defendant, "whether or not a sign falls within the prohibition, is entirely contingent upon the content of the message displayed. If the message displayed is the time, date and temperature, the message may change constantly; any other message may change only every 15 minutes." Def.'s Memo at 9-10. On the other hand, the State argues that 2 14.07.1 is not a content-based regulation, because all content is permitted; the ordinance regulates only the frequency of the change in message, not the content of the message itself.

The defendant has the better of this first leg of the analysis. Admittedly, the 15-minute timing regulation does not regulate the actual content of the message. But, while it is true that the 15-minute timing regulation regulates only the frequency of change in the message, *that regulation varies depending on the content of the message.* if the content of the message is the "date, time, and temperature", the change-of-message may occur more than once every 15 minutes. If the content of the message is anything else, say for example "Why Wait? Walk In For Better Health", the change-of-message may not occur more than once every 15 minutes. Therefore, Sign Code §214.07.1 *(the I5-minute provision)* is a content-based regulation.

That result -- finding that the 15-minute timing regulation of §214.07.1 is a content-based regulation -- is easily supported by the constitutional jurisprudence on that issue. As our own Eighth Circuit Court of Appeals has noted, "The [United States] Supreme Court has held that a restriction on speech is content-based when the message conveyed determines whether the speech is subject to restrictions." *Whitton v. City of Gladstone, Mo.,* 54 F.3d 1400, 1404 (8th Cir. *1995)* (emphasis added). Stated a little differently, a regulation is content-based, if "it makes impermissible distinctions based solely on the content or message conveyed by the sign." *Id.* (emphasis partly mine, partly the Eighth Circuit's).

A content-based regulation of commercial speech requires stricter scrutiny than a content-neutral regulation. As stated above, for the State to enforce a content-based regulation, it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. *Perry Education Association,* 460 U.S. at 45.

Both parties agree that highway safety is a "compelling state interest." The issue is whether 214.07.1 is narrowly drawn to achieve that end. The State claims the ordinance "is narrowly tailored to serve the city's interest in maintaining the free-flow of traffic and to prevent distracting signs from overloading drivers' senses." Pl.'s Memo at 14. For his part, defendant Dahl argues that "nothing in the legislative history, by way of expert testimony, data, or otherwise, in any way relates the content of the signs to traffic safety." Def.'s Memo at 17.

Defendant Dahl has correctly stated the record - the State did not provide any evidence that Sec. 214.07.1 is narrowly drawn to achieve its end. Even the State concedes that "there is no conclusive 'proof that electronic billboards distract drivers' attention any more than other distractions."

Nonetheless, the State argues that "great deference is to be given to the legislative judgment of the City Council..." Pl.'s Memo at 10.

In most instances it is appropriate for a court to give deference to the legislative judgment of a City Council. However, when the regulation involved regulates speech, as 214.07.1 does, that deference disappears:

> Although this presumption of constitutionality is well established in the ordinary case [citations omitted], "any provision of law restricting [first amendment] rights does not bear the usual presumption of constitutionality normally accorded to the legislative enactments." [Citations omitted]. The presumption of constitutionality cannot be reconciled with the unique protections afforded by the first amendment.

Humphrey v. Casino Marketing Group, Inc., 491 N.W.2d 882, 885 ~Minn. 1992). Therefore, since Sign Code §214.07.1 regulates speech, we will not presume that it is constitutional. Rather, the State must affirmatively go forward, without the benefit of any presumption of constitutionality, and prove that 214.07.1 is constitutional.

And, it seems to me, that the State's proof in that regard must match the distinction made by 214.07.1's 15-minute timing regulation. In other words, the State has the burden of moving that there's a rational basis for 214.07.1's distinction between a rapidly-changing time-and-temperature message and all other rapidly-changing messages. That's not an easy evidentiary task. Intuitively, at first blush, both kinds of messages - regardless of content - have the same potential to distract motorists. In fact, if there's any "presumption" in the case, that's probably it: that there is no such realistic distinction between those two messages' respective distracting effect on motorists' attention.

The State has not supplied any proof whatsoever to overcome that intuitive presumption. As a result, the State has not provided any evidence that 214.07.1 is narrowly tailored to directly advance the State's interest, and has not met its burden of proof. Therefore, we find that 214.07.1 is an unconstitutional restriction of the defendant's First Amendment rights and, accordingly, dismiss Counts Four, Nine, Fourteen, and Nineteen which charge a violation of that Sign Code provision.

B. The Content-Neutral Prohibitions Against Signs Displaying Motion or Flashing

Sign Code §214.04.6 prohibits "motion signs", defined (elsewhere in the Code) as a "sign which revolves, rotates, has moving parts or gives the illusion of motion." The best examples in our case of such "motion signs" that "give the illusion of motion" are the simulated images of animated snowflakes and of a waving American flag that defendant Dahl displayed on his electronic readerboard on the offense-dates.

Sign Code §214.04.7 prohibits "flashing signs", defined (elsewhere in the Code) as an "illuminated sign which has intermittent flashing lights, revolving beacons, zip flashers or exhibits a noticeable change in color or light intensity." Some of the images and messages displayed by defendant Dahl on his electronic readerboard on the offense-dates have "intermittent flashing lights" and exhibit "a noticeable change in color and light."

Both parties agree that Sign Code §.214.04.6 and 214.04.7 are content-neutral regulations of commercial speech. In *Central Hudson Gas,* the United States Supreme Court outlined a test for content-neutral regulation of commercial speech.

> For commercial speech to come within [the First Amendment], it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Central Hudson Gas & Electric Corp. vs. Public Service Commission of N Y., 447 U.S. 557, *566* (1980). The State concedes that defendant Dahl's commercial speech (the proposed messages on his electronic readerboard) concerns lawful activity and is not misleading. So, the first issue is whether the asserted governmental interest is substantial. The State asserts "the City of Fridley has a substantial interest in keeping roadway distractions to a minimum." Pl.'s Memo at 7. The

U.S. Supreme recognized reducing roadway distractions as a substantial governmental interest in *MetroMedia.*

> There [is no] substantial doubt that the twin goals that the ordinance seeks to further - traffic safety and the appearance of the city - are substantial governmental goals.

MetroMedia v. City of San Diego, 453 U.S. 490, *507-508* (1981). We also do not doubt. that improving traffic safety is a substantial government interest. So, the only truly contested prongs of the *Central Hudson* test is whether the Sign Code's prohibition against "motion" and "flashing" directly advance the governmental interest asserted (traffic safety) and whether those prohibitions are not more extensive than are necessary to serve that interest of traffic safety.

1. Whether 214.04.6 and 214.04.7 Directly Advance the Goal of Improving Traffic Safety

The State has a much lighter evidentiary burden to carry on these prohibitions against "motion signs" and "flashing signs" than it did on the 15-minute timing regulation. For one thing, there's very little the State needs to prove here. Any motorist intuitively knows that "motion signs" and "flashing signs" are distracting and, hence, a threat to traffic safety. It is not at all unreasonable for a legislative body - like Fridley's City Council - to translate that common knowledge into a Sign Code that prohibits "motion signs" and "flashing lights", in order to "directly advance the governmental interest" of traffic safety.

The reasonableness of such legislative judgments has been recognized by appellate courts when it comes to another similar roadside distraction - billboards. In the representative quote that follows, it would be eminently fair to substitute "motion signs" and "flashing signs" for "billboards."

> The more serious question, then, concerns the third of the *Central Hudson* criteria: Does the ordinance "directly advance" governmental interests in traffic safety and in the appearance of the city? It is asserted that the record is inadequate to show any connection between billboards and traffic safety. The California Supreme Court noted the meager record on this point but held "as a matter of law than an ordinance which eliminates billboards designed to be viewed from streets and highways reasonably relates to traffic safety." 26 Cal.3d, at ***859,*** 164 Cal.Rptr., at *515,* 610 P.2d, at 412. Noting that "[b]illboards are intended to, and undoubtedly do, divert a driver's attention from the roadway," *ibid.,* and that whether the "distracting effect contributes to traffic accidents invokes, an issue of continuing controversy," *ibid.,* the California Supreme Court agreed with many other courts that a legislative judgment that billboards are traffic hazards is not manifestly unreasonable and should not be set aside. We likewise hesitate to disagree with the accumulated, common-sense judgments of local lawmakers and of the many reviewing courts that

> billboards are real and substantial hazards to traffic safety. There is nothing here to suggest that these judgments are unreasonable.

Metromedia, supra, *453* U.S. at 508-509 (emphasis added).

In our case, we have evidence of the "accumulated, common-sense judgments of local lawmakers" on this present issue of "motion signs" and "flashing signs." To his 8/30/02 Affidavit, the prosecutor in this case has attached the legislative judgments of City Councils of a number of other north suburban communities which, like Fridley's City Council, prohibit "motion signs" and "flashing signs." Here are some representative examples:

Andover:	Flashing signs are prohibited.
Crystal:	Electronic readerboards are permitted, provided they don't display moving parts, or illumination with any flashing or intermittent lights, or animation.
Coon Rapids:	Flashing, blinking, fluttering and signs that change in brightness or color are not allowed
Osseo:	Signs that display moving parts, or are illuminated with any flashing or intermittent lights or that are animated are prohibited.

Defendant Dahl may complain that our taking into account those legislative judgments of other north suburban City Councils is tantamount to lending a presumption of constitutionality to ordinances that regulate speech, something which appellate decisions such as *Humphrey v. Casino Marketing Group, Inc.*, say we must not do. But, we are not doing that. We are not presuming the constitutionality of Sign Code § 214.04.6 and 214.04.7. if we did so, we would virtually be eliminating the State's burden of proof. The State still has the burden of proof, and we are not lightening that burden with any presumptions. Rather, we are simply recognizing that the State has carried its burden on this one prong of the *Central Hudson* test, namely: whether the Sign Code prohibitions against motion signs and flashing signs directly advance the Council's governmental interest in traffic safety.

The Court is not dissuaded from that determination (that the State has carried its burden on this "directly advance governmental interest" prong of the *Central Hudson* test) by various submissions by defendant Dahl. Those submissions were also submitted to the various City bodies (e.g., Planning Commission, Council) by defendant back in 2001 when he was trying to obtain either a variance from or an amendment to the 15-minute timing provision of the Sign Code.

Two of those submissions are letters from two California cities (Norwalk and Costa Mesa) providing statistical information about the causal relationship - or lack thereof - between electronic readerboards ("with animation and motion") and motor vehicle accidents at two intersections in those cities. Both letters are of some vintage by now (1988) and, regardless of their age, are of dubious statistical validity.

Another submission was a letter from an official with the United States' Department of Transportation. If anything, this U.S. D.O.T. letter confirms the reasonableness of the Fridley City Council's legislative judgment for, at one point in that letter, the D.O.T. official says that "these [changeable message] signs may still not contain flashing, intermittent, or moving lights."

2. Whether 214.04.6 and 214.04.7 Are More Extensive Than Are Necessary' to Serve the Interest of Traffic Safety

Sign Code § 2 14.04.6 and 2 14.04.7 prohibit the display of motion and flashing on electronic readerboards such as defendant Dahl's. We determined, above, that those regulations directly advance the City's governmental interest of traffic safety. The next (and last) *Central Hudson* question is whether those regulations are more extensive than are necessary to serve the interest of traffic safety.- In *Metromedia,* the U.S. Supreme Court noted:

> If the city has a sufficient basis for believing that billboards are traffic hazards and are unattractive, then obviously the most direct and perhaps the only effective approach to solving the problems they create is to

prohibit them.

453 U.S. at 508. Here, the City of Fridley showed a sufficient basis for believing that electronic readerboards that display motion and flashed are traffic hazards. Instead of prohibiting such signs altogether, the City simply prohibited the use of the motion and flashing capabilities, those capabilities that the City Council legislatively judged to be distracting. Because the City has only banned those uses of electronic readerboards that are distracting to drivers (display of motion and flashing), 2 14.04.6 and 2 14.04.7 are not more extensive than are necessary to serve the interest of traffic safety.

Since all four prongs of the *Central Hudson* test have been satisfied, we decline to declare 214.04.6 and 214.04.7 unconstitutional under the First Amendment. Accordingly, we deny defendant Dahl's motion to dismiss those Counts in the Complaint that charge violations of those Sign Code sections.

Based upon all of those considerations, and upon the evidence and arguments presented by the parties, the Court now makes the following Order for Judgment:

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[2] Even the *Flying .1. Travel Plaza* case, which the defendant relies heavily upon in his argument, recognizes that

"regulations regarding time limits and the number of electronic cycles displayed, as distinguished from content, could have some bearing on highway safety." 928 S.W.2d 344, 349 (Ky. 1996).

ORDER

1. Defendant Dahl's motion to dismiss the complaint is *GRANTED* as to Counts Two, Four, Seven, Nine, Twelve, Fourteen, Seventeen, and Nineteen.

2. Defendant Dahl's motion to dismiss the complaint is *DENIED* as to all other Counts of the Complaint.

3. The Court Administrator shall immediately schedule a pre-trial in this case and notify the parties' attorneys accordingly. Such notice to the attorneys shall be deemed to be notice to their clients.

4. The Court Administrator shall advise the parties of this present Order by mailing copies of the same to the parties' attorneys, whose names and addresses are set forth on the first page of this Order.

BY THE
COURT

Dated this ___ day of December, 2002.
Daniel M. Kammeyer
Judge of Anoka County District Court
Tenth Judicial District

FRIDLEY CITY CODE
CHAPTER 214. SIGNS
(Ref. 318, 330, 344, 382, 438, 666, 672, 799, 837, 860, 913)

214.01 Purpose

The purpose of this Chapter is to protect and promote the public health, safety and general welfare of the City of Fridley through the establishment of a comprehensive and impartial set of regulations governing the erection, display and use of signs serving as a visual media to persons upon public or private properties. These regulations are intended to provide an opportunity for effective communication, allow a reasonable freedom of choice and promote a concern for the visual amenities on those people designing, displaying, erecting or utilizing signs while at the same time assuring that the public health, safety and general welfare of the City is preserved.

214.02. DEFINITIONS

The following words and terms, wherever they occur in this Chapter, are defined as follows and shall apply in its interpretation and application:

1. Abandoned Sign.

A sign which no longer correctly advertises a bona fide business, lessor, owner, activity, use or product available on the premises where the sign is displayed for a continuous period of more than three (3) months.

2. Address Sign.

A sign consisting of numbers or numbers and a street name, identifying the address of a building.

3. Advertising Sign.

A sign which is used to advertise products, goods, uses or services.

4. Alteration.

Any major change, excluding routine maintenance, of an existing sign.

5. Area Identification Sign.

A sign which identifies the name of a neighborhood, a residential subdivision, a multiple residential complex or a business or industrial area.

6. Banners And Pennants.

A temporary sign constructed of cloth, canvass, paper, plastic film or light fabric.

7. Bench Sign.

A sign which is attached to a bench.

8. Billboard.

A sign advertising a business, product, service, use or entertainment which is conducted, sold or offered somewhere other than on the premises where the sign is located.

9. Changeable Sign, Automatic.

An electronically controlled sign, including a time, temperature or date sign, or a message center or a readerboard, where different message changes are shown on the same panel.

10. Changeable Sign, Manual.

A sign on which the message is changed manually.

11. Construction Sign.

A temporary sign erected at a construction site identifying the project. It may include the name of the architect engineer, contractor, financier or other information about the project.

12. District.

A zoning district as defined in Chapter 205, Zoning, of the City Code.

13. Flashing Sign.

An illuminated sign which has intermittent flashing lights, revolving beacons, zip flashers or exhibits a noticeable change in color or light intensity.

14. Free Standing Sign.

A sign which is securely attached to the ground and not attached to any part of a building or structure.

15. Governmental Sign.

A sign which is erected by a governmental unit for the purpose of directing or guiding traffic or providing public information.

16. Illuminated Sign.

A sign which is illuminated by an artificial light source.

17. Information Sign.

A sign giving intonnatron or directions to employees, visitors or delivery vehicles and containing no advertising. An information sign may display the name, address or identifying symbol of the business.

18. Institutional Sign.

A sign which identifies a public or private institution including churches, schools, hospitals and medical clinics.

19. Motion Sign.

A sign which revolves, rotates, has moving parts or gives the illusion of motion.

20. Nonconforming Sign, Legal.

A sign which lawfully existed prior to the adoption of this Chapter, but does not comply with all requirements of this Chapter.

21. Nonconforming Sign, Illegal.

Any sign in any district which was constructed in violation of any requirements of this Chapter, and is not a legal nonconforming sign. (Ref 837)

22. Permanent Sign.

A sign constructed of materials including plastic or metal that are durable and easily maintained, and which is intended to be used for an indefinite period of time. Signs painted directly on structures, wood or wood products are not authorized or included in this definition.

23. Personal Expression Sign.

A sign which expresses an opinion or feeling of an individual or group and which its principal purpose, is not for the promotion of any good or service. (Ref. 860)

24. Political Sign.

A temporary sign advertising election issues or the candidacy of a person running for public office.

25. Portable Sign.

Any temporary sign that is designed to be transported, including but not limited to: (Ref. 913)

A. A sign with wheels removed.

B. A sign with chassis or support constructed without wheels.

C. A or T frame signs.

D. Signs temporarily or permanently attached to the ground, a structure, or other signs.

E. A sign mounted on a vehicle for advertising purposes, parked, and visible from public right-of-way except signs identifying the business when the vehicle is being used for normal day to day business operations.

F. Menu and sandwich boards.

G. Searchlight stands.

H. Hot air or gas-filled balloons or umbrella's used for advertising.

I. Temporary signs.

26. Porta-panel.

A portable sign, mounted on wheels and used for commercial as well as civic promotions.

27. Projecting Sign.

A sign, attached to a wall, that projects perpendicular from a building or structure.

28. Real Estate Sign.

A temporary sign erected for the purpose of selling, leasing or promoting real estate.

29. Roof Sign.

A sign which is erected, constructed or attached above the roof line of a building, except where the roof is an extended facade or mansard.

30. Rummage/Garage Sale Sign.

A temporary sign which advertises or directs the public to the, sale of used merchandise, sold from a private residence.

31. Shopping Center/Multiple Use Building.

A building planned and developed for multiple occupancy whether as a commercial or industrial use.

32. Sign.

A painted panel lettered board, series of letters or symbols or other display and any supporting structure used to advertise, direct, identify, inform or convey a message to anyone who views it.

33. Sign Area.

The area of a sign, including the border and the surface which bears the advertisement. In the case of messages. figures or symbols attached directly to any part of a building or sign structure, it is that area which is included in the smallest geometric figure which cart be made to circumscribe the message, figure or symbol.

34. Sign Area, Maximum.

The maximum allowable sign area for a single faced free standing sign refers to that single facing. When a free standing sign has multiple faces, then the maximum allowable sign area doubles.

35. Sign Structure.

Any structure which supports or is capable of supporting a sign, but not including a building to which a sign is attached.

36. Temporary Sign.

Any sign fabricated of [illegible] plywood, fabric, or other light, impermanent material intended to be displayed unchanged for a period of 14 days. (Ref. 913)

37. Wall Graphic.

A graphic design or decorative mural, not intended for identification or advertising purposes, which is painted directly on the exterior surface of a building.

38. Wall Sign.

A sign which is attached to the wall of a building or structure.

39. Window Sign.

A sign attached to the inside of a window for the purpose of viewing from outside the building. This term does not include merchandise located in a window.

214.03. GENERAL PROVISIONS FOR ALL DISTRICTS

The following provisions shall apply to Sections 214.04 through 214.07. Any sign shall be constructed in such a manner and of such material that it will be safe and substantial. Nothing in this Chapter shall be interpreted as authorizing the erection or display of any sign not now permitted under Chapter 205 of the City Code.

214.04. SIGNS PROHIBITED IN ALL DISTRICTS

1. Any permanent signs, other than governmental signs, erected or displayed upon any rightof way or public property.

2. Any signs or. wall graphics that contain words or pictures of obscene, pornographic or immoral character.

3. Any signs painted directly on buildings.

4. Any signs which by reason of size, location, movement, content, coloring or manner of illumination may be confused with the light of an emergency or road equipment vehicle, a traffic sign, signal or device or which hides from view any traffic sign, signal or device.

App. 59

5. Any projecting signs.

6. Any motion signs.

7. Any flashing signs.

8. Any signs located within a corner vision safety zone as defined in Chapter 205.

214.05. SIGNS PERMITTED IN ALL DISTRICTS

1. Address Signs.

Each dwelling, business or building must have a minimum of one (1) address sign, that is a minimum of three and one-half (3 1/2) inches high and a maximum of twenty-four (24) inches high. The sign must be illuminated or reflective and visible from the public right of way.

2. Bench Signs.

Displayed only at bus stops and cannot be any larger than or extend beyond any portion of the bench.

3. Flags.

Shall be displayed as outlined in Title 36, Section 173-378 of the United States Code, State Flag and Corporate Flag.

4. Governmental Signs.

5. Informational Signs.

Provided they meet the following requirements:

A. A maximum size of four (4) square feet in area.

B. A minimum distance often (10) feet from any property line or driveway.

6. Institutional Signs.

Provided they meet the following requirements:

A. A maximum size of thirty-two (32) square feet in area.

B. A minimum distance Of ten (10) feet from any property line or driveway.

C. A hospital emergency sign may be a maximum of 100 square feet in area.

7. Personal Expression Sign.

Provided they meet the following requirements:

A. A maximum size of thirty-two (32) square feet in area per sign.

B. A maximum of three signs per tax parcel.

C. A maximum distance often (10) feet from any property line or driveway.

D. The sign is erected by the owner of the property upon which it is located, or the tenant with the permission of the owner. (Ref. 860)

214.06. TEMPORARY SIGNS PERMITTED IN ALL DISTRICTS

1. Construction Signs.

A. Multiple Developments. Construction signs may be erected for the purpose of identifying a development of ten (10) or more dwellings, ten (10) or more mobile homes, three (3) or more multiple dwellings, or a building consisting of three (3) or more businesses or industries, with the following restrictions:

(1) One (1) sign per street frontage.

(2) A maximum size of fifty (50) square feet in area per development.

(3) Located no closer than 100 feet to a building outside the development.

(4) A minimum distance often (10) feet, from any property line or driveway.

(5) To be removed upon completion of the construction.

B. Other Developments.

(I) One (1) sign per building.

(2) A maximum size of six (6) square feet in area.

(3) A minimum distance often (10) feet from any property line or driveway.

(4) To be removed upon completion of the construction.

2. Real Estate Signs.

A. Multiple Developments. Real estate signs may be erected for the purpose of selling, leasing or promoting development often (10) or more dwellings, ten (10) or more mobile homes, three (3) or more multiple dwellings and building consisting of three (3) or more businesses or industries, with the following restrictions:

(1) One (1) sign per street frontage.

(2) A maximum size of fifty (50) square feet in area per development.

(3) Located no closer than 100 feet to a building outside of the development.

(4) To be removed when the project is ninety-five percent (95%) sold or leased.

(5) A minimum distance often (10) feet from any property line or driveway.

B. Other Developments.

(1) One (1) sign per building

(2) A maximum size of six (6) square feet in area.

(3) To be removed within five *(5)* days following the sale or lease of the building.

(4) A minimum distance often (10) feet from any property line or driveway.

(5) "Open House" signs are allowed only during the day of the open house.

3. Political Signs.

A. A maximum size of thirty-two (32) square feet in area.

B. To be removed within five (5) days following the election.

C. Fifteen dollars *($15.00)* will be deposited with the City prior to the erection of any signs and retained until all of the signs are removed. If all of the signs are not removed, the deposit will be used to defray the cost of removal. Any additional cost will be billed to the person posting the original deposit.

D. Any sign larger than three (3) square feet in area must be placed a minimum distance often (10) feet from a street curb and ten (10) feet from any driveway.

4. Rummage/Garage Sale Signs.

A. A maximum size of three (3) square feet in area.

13. To be removed within three (3) days following the sale.

5. Banners or Pennants.

A. Banners or pennants commemorating a special event not• connected with a business, are permitted when installed not more than twenty-five *(25)* days prior to the event and removed within five *(5)* days following the event.

B. Banners or pennants for business anniversaries or grand openings are allowed only for a maximum often (10) days.

214.07.

SIGNS PERMITTED WITH A SPECIAL USE PERMIT

1. Automatic changeable signs are permitted in all districts except residential districts, and then only after the issuance of a special use permit subject to the following minimum conditions:

A. Conformance to the sign requirements within that district.

B. The message shall not change more than once every fifteen (15) minutes except for a sign displaying time, temperature and/or date.

2. Billboards.

214.08.

SPECIFIC DISTRICT REQUIREMENTS

In addition to those signs permitted in all districts, the following signs are permitted in each specific district and shall be regulated as to type, size, and setback according to the following requirements.

STATE OF MINNESOTA

PLAINTIFF,

VS.

NAME: first. middle. last
Wayne Earl Dahl
177 l-Hartman Circle
Fridley, Minnesota 55432

Date of Birth
01/15/53

SJIS COMPLAINT NUMBER 02-11-2-038695

DEFENDANT.

ANOKA COUNTY

COMPLAINT

Wayne Earl Dahl ("Dahl"), resident of the City of Fridley, owns and operates a business located in the City of Fridley at 7699 Highway 65. After having made an application, Dahl appeared before the City Planning Commission of the City of Fridley requesting a special use permit to install and use an prior to and during the public hearing that such a sign would be required to abide by the sign code of the City of Fridley, which included a 15-minute required length of time for a message to remain posted on the board prior to change, as well as a prohibition against motion or apparent motion and flashing. Dahl indicated that he understood the restrictions imposed by the City's ordinances and would abide by them. He was granted a special use permit by the City Council on February 26, 2001, after receiving the favorable recommendation of the Planning Commission of the City.

On or about February 14, 2001, Dahl appeared before the City of Fridley Appeals Commission seeking a variance to allow him to use the sign in a manner that would permit it to change its message more often than every fifteen minutes. Once again, City staff clearly stated on the record the time requirements imposed by the ordinance to Dahl. The Appeals Commission unanimously recommended denial of the request to the Fridley City Council, which in turn denied the request on April 26, 2001.

On May 16, 2001, Dahl and the sign builder requested a zoning text amendment before the City Planning Commission that would allow for more frequent changes in the displays on the sign. After numerous public hearings and opportunity for comment from interested citizens and groups, the City Council unanimously voted against modifying the ordinance.

On or about March 22, 2002, Dahl turned the sign on to display time, temperature, and two separate messages advertising Dahl 's chiropractic business, as well as animated snowflakes. The sign was displaying nearly constant motion and flashing and the messages were appearing at intervals substantially less than every 15 minutes. Dahl received a citation for violating the City sign code and later met with City staff where the provisions of the City's ordinances were again explained to him. On that day, and subsequently when the sign was on, City staff observed vehicles slowing down and even pulling off the road, clearly distracted by the sign.

On or about April 3, 2002, Dahl once again turned on the sign, which again showed motion, and was flashing.

Dahl was issued citations for violations of three separate provisions of the sign ordinance.

On or about April 4, 2002. the sign was turned on at approximately 8:50A.M., showing a waving flag with motion and flashing. Dahl was issued additional citations

On or about April 5, at approximately 7:43 a.m., the sign was turned on to, once again, display with motion a representation of a flag, as well as a text message. Once again Dahl was cited for the manner in which the sign was being used in violation of the City's regulations.

THESE ACTS, therefore, constituting the following:

COUNT ONE: On March 22, 2002, Dahl did operate a sign displaying motion.

Said acts constituting the offense of operating a prohibited sign displaying motion in violation of Fridley Municipal Code §214.04.06

COUNT TWO: On March 22, 2002, Dahl did operate a sign that caused traffic distraction.

Said acts constituting the offense of operating a prohibited sign displaying motion and causing traffic distraction at intersection in violation of Fridley Municipal Code §214.04.4.

COUNT THREE: On March 22, 2002, Dahl did operate a sign using flashing lights.

Said acts constituting the offense of operating a prohibited sign displaying motion and flashing in violation Of Fridley Municipal Code §214.04.07.

COUNT FOUR: On March 22, 2002, Dahl did operate a sign with message changes more frequent than every fifteen minutes.

Dahl was issued additional citations

On or about April 5, at approximately 7:43 a.m., the sign was turned on to, once again, display with motion a representation of a flag, as well as a text message. Once again Dahl was cited for the manner in which the sign was being used in violation of the City's regulations.

THESE ACTS, therefore, constituting the following:

COUNT ONE: On March 22, 2002, Dahl did operate a sign displaying motion.

Said acts constituting the offense of operating a prohibited sign displaying motion in violation of Fridley Municipal Code §214.04.06

COUNT TWO: On March 22, 2002, Dahl did operate a sign that caused traffic distraction.

Said acts constituting the offense of operating a prohibited sign displaying motion and causing traffic distraction at intersection in violation of Fridley Municipal Code §214.04.4.

COUNT THREE: On March 22, 2002, Dahl did operate a sign using flashing lights.

Said acts constituting the offense of operating a prohibited sign displaying motion and flashing in violation Of Fridley Municipal Code §214.04.07.

COUNT FOUR: On March 22, 2002, Dahl did operate a sign with message changes more frequent than every fifteen minutes.

Said acts constituting the offense of operating a prohibited sign displaying motion with message changes at a greater frequency than every 15 minutes in violation of Fridley Municipal Code §214 07 01

COUNT FIVE: On March 22, 2002, Dahl did operate a sign in such a manner as to cause a distraction which endangered or harmed passing motorists traveling on Highway 65.

Said act constituting the offense of operating a sign causing nuisance on a public roadway in violation of Minn. Stat. §609.74, Subd. 2.

COUNT SIX: On April 3, 2002, Dahl did operate a sign displaying motion.

Said acts constituting the offense of operating a prohibited sign displaying motion in violation of Fridley Municipal Code §214.04.06

COUNT SEVEN: On April 3, 2002, Dahl did operate a sign that caused traffic distraction.

Said acts constituting the offense of operating a prohibited sign displaying motion and causing traffic distraction at intersection in violation of Fridley Municipal Code §214.04.4.

COUNT EIGHT: On April 3, 2002, Dahl did operate a sign using flashing lights.

Said acts constituting the offense of operating a prohibited sign displaying motion and flashing in violation of Fridley Municipal Code §214.04.07.

COUNT NINE:. On April 3, 2002. Dahl did operate a sign with message changes more frequent than every fifteen minutes.

Said acts constituting the offense of operating a prohibited sign displaying motion with message changes at a greater frequency than every 15 minutes in violation of Fridley Municipal Code §214.07.01

COUNT TEN: On April 3, 2002, Dahl did operate a sign in such a manner as to cause a distraction which endangered or harmed passing motorists traveling on Highway 65.

Said act constituting the offense of operating a sign causing nuisance on a public roadway in violation of Minn. Stat. §609.74, Subd. 2.

COUNT ELEVEN: On April 4, 2002, Dahl did operate a sign displaying motion.

Said acts constituting the offense of operating a prohibited sign displaying motion in violation of Fridley Municipal Code §214.04.06

COUNT TWELVE: On April 4, 2002, Dahl did operate a sign that caused traffic distraction.

Said acts constituting the offense of operating a prohibited sign displaying motion and causing traffic distraction at intersection in violation of Fridley Municipal Code §214.04.4..

COUNT THIRTEEN: On April 4, 2002, Dahl did operate a sign using flashing lights.

Said acts constituting the offense of operating a prohibited sign displaying motion and flashing in violation of Fridley Municipal Code §214.04.07.

COUNT FOURTEEN: On April 4, 2002. Dahl did operate a sign with message changes more frequent than every fifteen minutes.

Said acts constituting the offense of operating a prohibited sign displaying motion with message changes at a greater frequency than every 15 minutes in violation of Fridley Municipal Code §214.07.01

COUNT FIFTEEN: On April 4, 2002, Dahl did operate a sign in such a manner as to cause a distraction which endangered or harmed passing motorists traveling on Highway 65.

Said act constituting the offense of operating a sign causing nuisance on a public roadway in violation of Minn. Stat. §609.74, Subd. 2.

COUNT SIXTEEN: On April 5, 2002, Dahl did operate a sign displaying motion.

Said acts constituting the offense of operating a prohibited sign displaying motion in violation of Fridley
Municipal Code §214 04 06

COUNT SEVENTEEN On April 5, 2002, Dahl did operate a sign that cause traffic distraction.

Said acts constituting the offense of operating a prohibited sign displaying motion and causing traffic distraction at intersection in violation of Fridley Municipal Code §214.04.4.

COUNT EIGHTEEN: On April 5,2002, Dahl did operate a sign using flashing lights.

Said acts constituting the offense of operating a prohibited sign displaying motion and flashing in
violation of Fridley Municipal Code, §214.04.07.

COUNT NINETEEN: On April 5, 2002. Dahl did operate a sign with message changes more frequent than every fifteen minutes.

Said acts constituting the offense of operating a prohibited sign displaying motion with message changes at a greater frequency than every 15 minutes in violation of Fridley Municipal Code §214.07.01

COUNT TWENTY: On April 5, 2002, Dahl did operate a sign in such a manner as to cause a distraction which endangered or harmed passing motorists traveling on Highway 65.

Said act constituting the offense of operating a sign causing nuisance on a public roadway in violation of Minn. Stat. §609.74, Subd. 2.

Maximum Sentence:

For each of the foregoing Counts the Maximum Sentence is 90 days in jail and $100.00 fine, and that said Defendant otherwise be dealt with according to law.

COMPLAINANT'S NAME:

COMPLAINANT'S SIGNATURE:

Being duly authorized to prosecute the offense(s) charged, I hereby
DATE: *May 15, 3002*

PROSECUTING ATTORNEY'S SIGNATURE

PROSECUTING ATTORNEY:
NAME: ADDRESS:

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in Court or his detention, if already in custody, pending further proceedings

The Defendant is thereof charged with the above-stated offense

SUMMONS

THEREFORE You, THE ABOVE-NAMED Defendant, ARE HEREBY SUMMONED to appear on the _ day of _____ 2000 at __ AM/PM before the above-named court at ______ to answer this complaint.

EXECUTE IN MINNESOTA ONLY

To the sheriff of the above-named county; or other person authorized to execute this WARRANT; I hereby order, in the name of the State of Minnesota, that the above-named Defendant be apprehended and arrested without delay and brought promptly before the above-named Court (if in session, and if not, before a Judge or Judicial Officer of such Court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon thereafter as such Judge or Judicial Officer is available) to be dealt with according to law.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

ORDER OF DETENTION

Since the above-named Defendant is already in custody: I hereby order; subject to bail or conditions of release, that the above-named Defendant continue to be detained pending further proceedings.

Bail:

Conditions of Release:

This COMPLAINT, duly subscribed and sworn to, is issued by the undersigned Judicial Officer this 15th day of May, 2002.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

NOTICE OF MOTION

vs.

Wayne Earl Dahl,

Defendant.

Court File No.TX-02-13038

TO: The above-named Plaintiff, and Frederick W. Knaak, 3500 Willow Lake Blvd., Suite 800, Vadnais Heights, MN 55110, its attorney:

PLEASE TAKE NOTICE that the above-named Defendant, by the undersigned, will bring the attached motion for hearing before the Honorable Daniel Kammeyer, Judge of the above-named Court, in his courtroom at the Anoka County Courthouse, 315 East Main Street, Anoka, Minnesota, on April 17, 2003, at 9:15 a.m., or as soon thereafter as counsel can be heard.

RANDALL TIGUE LAW OFFICE, P.A.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

MOTION TO DISMISS CRIMINAL COMPLAINT

vs.

Wayne Earl Dahl,

Defendant.

Court File No. TX–02-13083

The above-named Defendant, by the undersigned, hereby moves this Court for an order, pursuant to Rules 10 and 17 of the Minnesota Rules of Criminal Procedure, dismissing the criminal complaint against him on the following grounds:

1. The provisions of the Fridley City Sign Ordinance, under which Defendant is charged, are facially unconstitutional and unconstitutional as applied to Defendant, under the First and

Fourteenth Amendments to the United States Constitution.

2. The complaints fails to charge an offense under Sec. 214.04.4 or Minnesota's Public Nuisance Statute, Minn. Stat. Sec. 609.74, Subd. 2.

3. The complaints fail to allege sufficient facts to enable a neutral and detached magistrate to find probable cause to believe that Defendant violated the Fridley City Code or the public nuisance statute.

The foregoing motion is based upon the criminal complaint, upon the attached affidavit and exhibits, upon the attached memorandum of law, and upon all of the files, records and proceedings herein.

RANDALL TIGUE LAW OFFICE, P.A.

Dated: August 6, 2002

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

AFFIDAVIT OF RANDALL D.B. TIGUE

vs.

Wayne Earl Dahl,

Defendant.

Court File No.TX-02-13083

STATE OF MINNESOTA)
)SS
COUNTY OF HENNEPIN)

Randall D.B. Tigue, being first duly sworn on oath, hereby deposes and says the following:

1. Your affiant is the attorney for Defendant in the above-entitled matter.
2. Attached hereto as Exhibit A and incorporated

by reference as if fully set forth herein is Chapter 214 of the Fridley City Code, governing signs.

3. On May 17, 2002, your affiant wrote to Frederick W. Knaak, Fridley city attorney a letter, a copy of which is attached hereto as Exhibit B, requesting discovery of certain documents.

4. On June 18, 2002, your affiant received from Mr. Knaak, a reply, a copy of which is attached hereto as Exhibit C, setting forth various documents responsive to your affiant's request.

5. Among the documents provided to your affiant by Mr. Knaak, were the following:

   a. Police investigatory reports concerning the conduct giving rise to the incident in question. Copies of those reports are attached hereto as Exhibit D.

b. Correspondence from Scott Hickok, Community Development Director, to Defendant, dated March 1, 2001, together with attachments, relating to the denial of Defendant's request for a variance from the city's sign regulation, a copy of which is attached hereto as Exhibit E.

c. A copy of the staff report, dated May 16, 2001, a copy of which is attached hereto as Exhibit F, concerning a request by Daktronics, Inc., for a zoning text amendment, altering the provision of the Fridley city code prohibiting automatic changeable signs from changing more than once every 15 minutes.

d. A copy of the minutes of the Fridley Planning Commission meeting of May 16, 2001, a copy of which is attached hereto as Exhibit G, in which the zoning text amendment was considered.

e. A memorandum to the Fridley City Council, dated July 3, 2001, attached hereto as Exhibit H, as it relates to the zoning text amendment.

f. The minutes of the Fridley City Council meeting of July 9, 2001, attached hereto as Exhibit I, as it relates to the proposed zoning text amendment.

g. A copy of the minutes of the Fridley City Council meeting of July 23, 2001, attached hereto as Exhibit J, as it relates to the proposed zoning text amendment.

h. A letter from Kelly Koenig, Commercial Territorial Manager of Daktronics, Inc., to Mr. Hickok, dated August 17, 2001, attached hereto as Exhibit K, relating to the proposed zoning text amendment.

i. A memorandum from the United States Department of Transportation, Federal Highway Administration, dated July 17, 1996, attached hereto as Exhibit L, relating to off-premises changeable message signs.

j. A document labeled "Executive Summary" from the United States Department of Transportation, Federal Highway Administration, attached as Exhibit M, related to research on the safety impact of electronic billboards.

k. A memorandum from Mr. Hickok to William Burns, city manager, concerning electric reading boards signs, indicating the approach taken by various other communities with respect to such signs, attached hereto as Exhibit N.

6. In the Fridley City Council minutes of February 26, 2001, it is noted that Mr. Kelly Kannigan (sic), produced letters from both

Costa Mesa and Norwalk, indicating that electronic reader boards have no effect on traffic accidents. Your affiant has independently obtained copies of said letters, and said letters are attached hereto as Exhibits O and P.

7. Your affiant executes this affidavit in support of the attached motion to dismiss the criminal complaint against Defendant.

Randall D..B. Tigue

Subscribed and sworn to before
me this_____day of August, 2002

____
Notary Public

CITY OF FRIDLEY LAND USE APPLICATION

ZTA-01-01 - MAY 16, 2001

GENERAL INFORMATION

Applicant

Daktronics, Inc.
331 32ndAve.
Brookings, SD 57006 Requested Action:
Zoning Text Amendment

Purpose:

To allow automatic changeable signs displaying more than time, temperature, & date to change messages more than once every 15 minutes.

Location:

All commercial & industrial districts.

Zoning Ordinance Conformance:

Section 214.07.1 .B, regarding automatic changeable signs, states; ***"The message shall not change more than once every 15 minutes except for a sign displaying. time, temperature and/or date".***

Sign Code History:

- Updated in 1988, with involvement from sign contractors & the business community
- Appeals Commission & City Council denied variances to this section of the sign code in.

SUMMARY OF PROJECT

Daktronics, Inc., petitioner, is requesting a zoning text amendment to remove the City's requirement that automatic changeable signs not change messages more than once every 15 minutes.

SPECIAL INFORMATION

SUMMARY OF ANALYSIS

City Staff recommends denial of this zoning text amendment.

- Petitioner has failed to provide any reasoning to justify this change to the sign code.
- Does not appear to be community wide support for this text amendment. The quick changing messages seen on electronic reader boards in other communities may be detrimental to the public safety. It is not uncommon for a driver's eyes to be drawn to the changing messages on these signs.
- 'Appeals Commission & City Council have denied requests for variances to this code section (as recently as February 2001).

REQUEST

Daktronics, Inc., petitioner and manufacturer of electronic signs, is requesting a zoning text amendment to remove the City's requirement that automatic changeable signs not change messages more than once every 15 minutes.

CODE REQUIREMENTS

Section 214.07.1 .B, regarding automatic changeable signs, states; ***"The message shall not change more than once every 15 minutes except for a sign displaying time, temperature and/or date".***

SIGN CODE HISTORY

The City of Fridley Sign Code has undergone minor modifications since the last major revision of the Code in 1976. During the last major revision, a committee consisting of City officials, sign company representatives and the local Chamber of Commerce worked as a team to develop an effective sign code.

The committee that carried out this major revision developed an ordinance that has been so effective, that only minor changes to correct "typo's" or to clarify points have been made over the past 25 years. The section of the code, which the petitioner is proposing the City delete, was reviewed in 1984 and 1988 when minor changes were made to the sign ordinance.

ANALYSIS

Petitioner has failed to provide any reasoning or supporting materials to justify this proposed change to the sign code. The petitioner's supplement to the City's application sheet simply states, ***"Petitioner requests that paragraph B under code 214.07 be eliminated".***

There does not appear to be community wide support for the proposed zoning text amendment. This request did not come to the City through the Chamber of Commerce or other collection of businesses. Daktronics, Inc. is the official petitioner listed on the application sheet, which was accompanied with a check from, and hand delivered by, Dr. Wayne Dahl. Daktronics, Inc., of Brookings, South Dakota, is a manufacturer of automatic changeable signs and had worked with Dr. Dali on his unsuccessful request for a variance to this code section this past February. This request seeks to obtain a readerboard that changes at the frequency the petitioner desires.

The Appeals Commission and City Council both unanimously denied this same petitioners variance request to this code section in February,

2001. Denied due to a lack of hardship, both the Appeals Commission and Council mentioned concerns about safety and visual clutter.

The quick changing messages seen on electronic reader boards in other communities may be detrimental to the public safety. It is not uncommon for a driver's eyes to be drawn to the changing messages on these signs, if a portion of the message is not caught by the driver, often they will be trying to catch the remainder of the message in their rear view mirror as they drive past the message center. This is a threat to public safety.

RECOMMENDATIONS

City Staff recommends denial of this zoning text amendment request.

- Petitioner has failed to provide any reasoning to justify this change to the sign code.
- The quick changing messages seen on electronic reader boards in other communities may be detrimental to the public safety. It is not uncommon for a driver's eyes to be drawn to the changing messages on these signs.
- Appeals Commission & City Council have denied requests for variances to this code section (as recently as February 2001).

CITY OF FRIDLEY
PLANNING COMMISSION MEETING, MAY 16, 2001

CALL TO ORDER:

Chairperson Savage called the May 16, 2001, Planning Commission meeting to order at 7:30

p.m.

ROLL CALL:

Members Present:	Diane Savage, Barbara Johns, Dave Kondrick, Leroy Oquist, Larry Kuechle
Members Absent:	Connie Modig, Dean Saba
Others Present:	Paul Bolin, Planning Coordinator Kelly Koenig, Daktronics, Inc. Wayne Dahl, North Metro Spinecare Specialists, PA

APPROVE THE MAY 2, 2001, PLANNING COMMISSION MEETING MINUTES:

MOTION by Mr. Oquist, seconded by Mr. Kondrick, to approve the May 2, 2001, Planning

Commission meeting minutes as presented.
UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SAVAGE DECLARED THE MOTION CARRIED UNANIMOUSLY.

1. PUBLIC HEARING:
   Consideration of a Zoning Text Amendment, ZTA #01-01, by Daktronics, Inc., Wayne Dahl, to remove Section 214.07.1B of the City Sign Code, regarding automatic changeable signs, which states, 'the message shall not

change more than once every fifteen (15) minutes except for a sign displaying time, temperature and/or date".

MOTION by Mr. Kuechle, seconded by Mr. Oquist, to open the public hearing.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SAVAGE DECLARED THE MOTION CARRIED AND THE PUBLIC HEARING WAS OPENED AT 7:32 P.M.

Mr. Bolin stated that the petitioner, Daktronics, Inc., is seeking to change the Zoning Text of the Fridley Sign Code to allow automatic changeable signs displaying more than time, temperature, and date to change messages more than once every 15 minutes for all commercial and industrial districts. Staff recommends denial of this zoning text amendment. The petitioner has failed to provide any reasoning to justify this change to the sign code, and there does not appear to be community wide support for this text amendment. The quick changing messages seen on electronic reader boards in other communities may be detrimental to the public safety. It is not uncommon for a driver's eyes to be drawn to the changing messages on the these signs. Appeals Commission and City Council have denied requests for variances to this code section (as recently as February 2001).

Mr. Bolin stated that the petitioner is a manufacturer of electronic signs. The Fridley Sign Code states in Section 214.07.1B "The message shall not change more than once every fifteen minutes except for a sign displaying time, temperature and/or date". The Fridley Sign Code has undergone minor modifications since the last major revision of the Code in 1976. During the last major revision, a committee consisting of City officials, sign company representatives and the local Chamber of Commerce worked as a team to develop an effective sign code. The committee that carried out this major revision developed an ordinance that has been so effective, that only minor changes to correct "typo's" or to clarify points have been made over the past 25 years. The section of the code, which the petitioner is proposing the City delete, was reviewed in 1984 and 1988 when minor changes were made to the sign ordinance. The petitioner has failed to provide any reasoning or supporting materials to justify this proposed change to the sign code. The petitioner's supplement to the City's application sheet simply states: Petitioner requests that paragraph B under code 214.07 be eliminated."

Mr. Bolin stated this request did not come to the City through the Chamber of Commerce or any other collection of businesses. Daktronics, Inc. is the official petitioner listed on the application sheet; however, Dr. Wayne Dahl is a co-petitioner. The Appeals Commission and City Council both unanimously denied this same petitioner's variance request to this code section in February due to the concerns about safety and visual clutter. The quick changing messages seen on electronic reader boards in other communities may be detrimental to the public safety. It is not uncommon for a driver's eyes to be drawn to the changing messages on these signs. If a portion of the message is not caught by the driver, often they will be trying to catch the remainder of the message in their rear view mirror as they drive past the message center. This is a threat to public safety.

Mr. Kuechle asked if there were any state codes as to what can be permissible for changeable readerboard signs or City codes.

Mr. Bolin stated that the State leaves the sign code up to the local municipalities. It is staff's discretion to be as permissive as they want regarding these signs. Most communities do not have a time requirement on its boards, yet some cities do not allow those signs at all. Staff has had positive comments regarding the sign code in general. People feel the size limits are very generous and, other than this petitioner, there have not been many complaints on the sign code.

The petitioner, Kelly Koenig of Daktronics, Inc., stated that Dr. Dahl is not the only individual who has requested an electronic sign change. Based on the way the code is written, businesses have chosen not to purchase electronic signs. Modern society demands information these days. Without signs people would not know which way to go, there is a need for signage. People shop from their cars nowadays more than they ever have. These types Of electronic signs are used widely. These signs are more of an ally with government and transportation. Construction signs alert drivers with more than one message. What makes Fridley different than the other 3,000,000 communities in the country that do allow them? Technology changes along with the other things in life that change. They did not approach the Chamber of Commerce, but their intent was to see how the majority of business owners felt about this issue. They have a valid concern among the business owners with Ihis survey that was circulated for them to sign if they agreed with the changing of the code.

MOTION by Mr. Kondrick, seconded by Mr. Oquist, to accept the Petition for Fridley Change of Text Amendment.

PLANNING COMMISSION MEETING, MAY 16,2001
PAGE 3

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SAVAGE DECLARED THE MOTION CARRIED UNANIMOUSLY.

Mr. Koenig stated that he had a memorandum from the Department of Transportation adopted in 1996 regarding the changeable message signs. It states "Changeable message signs are acceptable for off premise signs regardless of the type of technology used. If the interpretation of the state/federal agreement allows such types of signs, because of the increased use of changeable message signs, we believe it is timely to restate our position concerning these signs."

to have messages like that.

Ms. Johns stated that it is a safety issue and she favors the fifteen minute time lapse. People go a lot faster than 45 miles per hour on University to give them more time to read it. If they change this, she can see all sorts of signs popping up. This would be hindrance to drivers, and people should be paying more attention to the roads, rather than what is on the side of the road.

MOTION by Mr. Oquist, seconded by Mr. Kondrick, to recommend denial ZTA #01-01.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SAVAGE DECLARED THE MOTION CARRIED UNANIMOUSLY.

Ms. Savage stated this item goes to City Council on June 4.

2. RECEIVE THE MINUTES OF THE APRIL 25. 2001, APPEALS COMMISSION MEETINGS:

MOTION by Mr. Kondrick, seconded by Ms. Johns, to receive the minutes.

UPON **A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SAVAGE DECLARED THE** MOTION **CARRIED** UNANIMOUSLY.

3. RECEIVE THE MINUTES OF THE APRIL 5. 2001. HOUSING AND REDEVELOPMENT AUTHORITY MEETING:

MOTION by Ms. Johns, seconded by Mr. Kondrick, to receive the minutes.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SAVAGE DECLARED THE MOTION CARRIED UNANIMOUSLY.

4. RECEIVE THE MINUTES OF THE MARCH 28. 2001, APPEALS COMMISSION MEETING:

MOTION by Mr. Kondrick, seconded by Mr. Oquist, to receive the minutes.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SAVAGE **DECLARED** THE MOTION CARRIED UNANIMOUSLY.

5. RECEIVE THE MINUTES OF THE APRIL 2. 2001, PARKS AND RECREATION COMMISSION MEETING:

MOTION by Mr. Oquist, seconded by Ms. Johns, to receive the minutes.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SAVAGE DECLARED THE MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT:

MOTION by Mr. Kondrick, seconded by Mr. Oquist, to adjourn the meeting.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SAVAGE **DECLARED THE** MOTION CARRIED AND THE MAY 16, 2001, PLANNING COMMISSION WAS **ADJOURNED** AT 7:59 P.M.

Respectfully submitted,
Signe L.Johnson

ORDINANCE NO. _

AN ORDINANCE TO AMEND CHAPTER 214, SIGNS OF THE FRIDLEY CITY CODE PERTAINING TO AUTOMATIC CHANGEABLE SIGNS

THE CITY COUNCIL OF THE CITY OF FRIDLEY DOES ORDAIN AS FOLLOWS:

Section 1

Section 214, SIGNS is hereby amended by deleting the following language:

SECTION 214, SIGNS

214.07. SIGNS PERMITTED WITH A SPECIAL USE PERMIT

B. The message shall not change more than once every fifteen (15) minutes except for a sign displaying time, temperature, and/or date.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FRIDLEY THIS__TH DAY OF ______,2001.

SCOTT J.
LUND, MAYOR

ATTEST:
debra A. Skogen, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING OF JULY 9, 2001

Date: 7/3/01

To: William Burns, City Manager

From: Scott Hickok, Community Development Director Paul Bolin, Planning Coordinator
Stacy Bulthuis, Planner
RE: Public Hearing for ZTA #01-01 M-01-79

INTRODUCTION

Daktronics, Inc., petitioner and manufacturer of electronic signs, is requesting a zoning text amendment to remove the City's requirement that automatic changeable signs not change messages more than once every 15 minutes.

PLANNING COMMISSION ACTION

At the May 16, 2001, Planning Commission meeting, a public hearing was held for ZTA 01-01. After reviewing the staff report and hearing from the petitioners, a motion was made to recommend denial of the proposed zoning text amendment. Planning Commissioners were adamant, in their recommendation of denial, that the existing sign code language is something they are very proud of and that the special use permit and variance process are the appropriate way to address this question. The motion passed unanimously.

PLANNING STAFF RECOMMENDATION

City Staff recommends the public hearing for ZTA 01-01 be held. City Staff further recommends concurrence with the Planning

Commission in denial of this zoning text amendment request.

- The quick changing messages seen on electronic reader boards in other communities may be detrimental to the public safety. It is not uncommon for a driver's eyes to be drawn to the changing messages on these signs.
- Appeals Commission & City Council have denied requests for variances to this code section (as recently as February 2001).

MOTION by Mr. Kondrick, seconded by Mr. Oquist, to close the public hearing. UPON A VOICE **VOTE, ALL VOTING AYE,** CHAIRPERSON **SAVAGE** DECLARED **THE**

MOTION CARRIED **AND** THE PUBLIC HEARING WAS CLOSED **AT 7:49 P.M.**

Mr. Oquist stated that he was on the Planning Commission when that ordinance was passed.
The City does allow movable signs; it is just the timing factor. They are to display a message
out there and the Sign Code as written is good and he would be against that change.

Mr. Kuechle concurred. The case is not made strongly enough that it would be beneficial to a very large number of people other than the people who want to sell the signs.

Ms. Savage also agreed. When she was on the Appeals Commission, one of her concerns with the variance request for signs was that they are a visual pollutant. and she would like to get rid of all the billboards and limit signs only to let people know where the businesses are. She is very proud of the Fridley sign ordinance and if there is a special need for such a sign, they can be presented as a variance request or special use request. This would be opening up the door to many signs that would add to the visual pollution, and.she is opposed to any change.

Mr. Kondrick stated that he was also on the Planning Commission when this was brought up before. He has not changed his mind since then. He believed the Sign Code they have functions well. Changing the code would mean visual pollution, and it is a danger

ORDINANCE NO. _

AN ORDINANCE TO AMEND CHAPTER 214, SIGNS OF THE FRIDLEY CITY CODE PERTAINING TO AUTOMATIC CHANGEABLE SIGNS

THE CITY COUNCIL OF THE CITY OF FRIDLEY DOES ORDAIN AS FOLLOWS:

Section 1

Section 214, SIGNS is hereby amended by deleting the following language:

SECTION 214, SIGNS

214.07. SIGNS PERMITTED WITH A SPECIAL USE PERMIT

B. ~~The message shall not change more than once every fifteen (15) minutes except for a sign displaying time, temperature, and/or date.~~

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FRIDLEY THIS_TH DAY OF ______,2001.

SCOTT J.
LUND, MAYOR

ATTEST:
debra A. Skogen, City Clerk

App. 98

PUBLIC HEARINGS:

8. CONSIDERATION OF AN ORDINANCE AMENDING CHAPTER 214, SIGNS, OF THE FRIDLEY CITY CODE, PERTAINING TO AUTOMATIC CHANGEABLE SIGNS (ZONING TEXT AMENDMENT, ZTA #01-01, BY DAKTRONICS, INC.):

MOTION by Councilmember Bolkcom to waive the reading of the public hearing notice and open the public hearing. Seconded by Councilmember Barnette.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED AND THE PUBLIC HEARING WAS OPENED AT 8:25 P.M.

Mr. Bolin, Planning Coordinator, stated that it was brought to their attention before the Council meeting that the petitioner wishes to postpone action on this item and would it be Council's decision whether to hold the public hearing or wait until the next meeting.

Mayor Lund stated that the public hearing should be held for input and direction.

Mr. Bolin stated that Daktronics, Inc., a manufacturer of electronic readerboard signs, is requesting a zoning text amendment to remove the City's requirements that automatic changeable signs should not change a message more than once every 15 minutes. The section removed from the zoning text is Section 214.07. 1B. It states as follows:

> B. The message shall not change more than once every fifteen *(15)* minutes except for a sign displaying time, temperature, and/or date.

Mr. Bolin stated that the major revision in 1976 by a committee made up of City officials, sign company representatives, and the local Chamber of Commerce, has been so effective that the only revisions have been to correct typos or clarify points made over the last 25 years. The section of code was reviewed in 1984 and 1988 when minor changes were made to the ordinance. At the May 16 Planning Commission meeting during the public hearing, the petitioner submitted a petition with 59 signatures requesting that that section of the sign code be eliminated. The Planning Commission denied the request citing that the special use permit process and variance process were the appropriate ways to address that question. This change would cause additional visual pollution and the frequency of changing messages is seen as a safety hazard. The case for this is not made strongly enough that it would benefit a very large number of people other than the manufacturers of the signs.

Mr. Bolin stated that staff recommends concurrence with the Planning Commission. The Appeals Commission and the Council denied a request for the variance to this code section in February.

FRIDLEY CITY COUNCIL MEETING OF JULY 9,2001

MOTION by Councilmember Bolkcom to receive the memorandum from the Director of the Office of Real Estate Services of the U.S. Department of Transportation, dated July 2, 1996. Seconded by Councilmember Wolfe.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED UNANIMOUSLY.

Councilmember Bolkcom asked if there is any indication of other surrounding communities' criteria.

Mr. Bolin stated that the research conducted at the time of the variance request did not show any other cities having time frames. Fridley is unique in the time limit and some cities do not follow any time limits at all.

Councilmember Bolkcom stated that she had a discussion with a representative from the Chamber of Commerce. They wished to have this tabled tonight so they could get more information regarding MnDOT's policy.

Councilmember Billings stated that one of the Planning Commission's concerns was visual pollution. He asked if there had been any other discussions.

Mr. Bolin stated that there has been no other options laid out other than simply removing this section of the code.

Councilmember Billings asked about the 60-day rule.

Mr. Bolin stated that they have already extended the 60-day rule once. The end of the 120 days would be August 11. The latest to postpone this would be until the July 23 meeting.

Councilmember Billings stated that the petitioner was here this evening and chose to leave and caused the process to be delayed. Council will have to vote on it without having any time to continue it any further.

Mayor Lund stated that at the next meeting, Council will have to explain what happened and that based on information received they may have to make a decision the same night.

Councilmember Bolkcom asked Mr. Knaak if they could extend this for another 60 days.

Mr. Knaak, City Attorney, stated that with one extension so far, if the petitioner is willing to acquiesce and waive any objection Council might otherwise have, it could be extended. This would be with consent.

Mr. John Rider, salesman for AttractaSign, stated that this is a question of whether Council wants message centers in their town. They have made a lot of improvements in the actual message center in the sign code. The signs are much more affordable now. Incorporating the message center into the same square footage allowed by code would now work better.

Councilmember Bolkcom stated that message boards are still allowed, except they do not show as many messages at one time. She does not see the public purpose being served by messages being changed more often.

Mr. Rider stated that it is in the eye of the beholder but if they are going to regulate the time in between they should allow it or not allow it. Every one of the cities around Fridley allows a message center. There is no time limit whatsoever and they are not regulated. Coon Rapids, Spring Lake Park, and Moundsview allow message centers.

Councilmember Bolkcom asked if there are communities that do not allow them at all.

Mr. Rider stated that he cannot think of one. The machines have become more computerized and less expensive.

Mayor Lund stated that there has been discussion of putting a readerboard up at City Hall rather than having the suction cup sign.

Mr. Rider stated that Anoka Ramsey Community College had a suction cup message board with a catwalk and somebody fell off. They got sued. A computer is much easier to enter the message into.

Councilmember Bolkcom stated that you can have a readerboard without changing the message.

Mr. Rider stated that whether it changes every minute or not is not the issue.

Councilmember Bolkcom stated that the hearing is

change more than every 15 minutes.
Mr. Rider stated that if the signs are not allowed to change, there is no sense in having them.

MOTION by Councilmember Billings to continue the public hearing until July 23 at which time Council will allow up to 7 minutes for additional input from people who were unable to attend this evening. Seconded by Councilmember Wolfe.

Councilmember Barnette asked if Councilmember Billings really wanted to limit the time for additional input.

Councilmember Billings stated that he did. Council took the time to be at the meeting to discuss this matter and spent the City of Fridley's taxpayer dollars to advertise for the discussion.

Councilmember Bolkcom stated that the Chamber of Commerce could not be here tonight and she is not sure why the petitioner left. She does not believe that seven minutes would be enough time for discussion.

Councilmember Barnette stated that the petitioner should have stayed, but seven minutes is a little short of time.

Mayor Lund stated that it is unfortunate that the petitioner left, but seven minutes may not be enough time.

UPON A **VOICE VOTE,** COUNCILMEMBERS **BILLINGS VOTING** AYE, MAYOR LUND AND COUNCILMEMBERS BARNETTE, WOLFE AND BOLKCOM VOTING

NAY, MAYOR LUND DECLARED THE MOTION FAILED 4 TO 1.

MOTION by Councilmember Bolkcom to continue the public hearing to July 23. Seconded by Councilmember Barnette.

UPON A VOICE VOTE, MAYOR LUND AND COUNCILMEMBERS BARNETTE, WOLFE AND BOLKCOM VOTING AYE, AND COUNCILMEMBER BILLINGS VOTING NAY, MAYOR LUND DECLARED THE MOTION CARRIED 4 TO 1.

14. CONSIDERATION OF AN ORDINANCE AMENDING CHAPTER 214, SIGNS, OF THE FRIDLEY CITY CODE, PERTAINING TO AUTOMATIC CHANGEABLE SIGNS (ZONING TEXT AMENDMENT, ZTA 1101-01, BY DAKTRONICS, INC.) (TABLED JULY 9,2001):

MOTION by Councilmember Billings to remove this item from the table. Seconded by Councilmember Barnette.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED AND THE PUBLIC REARING WAS CONTINUED.

Mr. Hickok, Community Development Director, stated that Daktronics, Inc., a manufacturer of electronic readerboard signs, is requesting a zoning text amendment to remove the City's requirements that automatic changeable signs should not change a message more than once every 15 minutes. The section removed from the zoning text is Section 214.07. lB. It states as follows:

> B. The message shall not change more than once every fifteen (15) minutes except for a sign displaying time, temperature, and/or date.

Mr. Hickok stated that the major revision to the ordinance in 1976 by a committee made up of City officials, sign company representatives, and the local Chamber of Commerce, has been so effective that the only revisions have been to correct typos or for clarification. This section of code was reviewed in 1984 and 1988 when minor changes were made to the ordinance, but it stayed intact. During the public hearing at the May 16 Planning Commission meeting, the petitioner submitted a petition with 59 signatures requesting that this section 'of the sign code be eliminated. The Planning Commission denied this request based on pride of the sign code and citing that the special use permit process and variance process were the appropriate ways to address this question. This change would cause additional visual pollution and the frequency of changing messages is seen as a safety hazard. The case is not made strongly enough that this would benefit a very large number of people other than the manufacturers of the signs.

Mr. Bolin, Planning Coordinator, stated that staff recommended concurrence with the Planning Commission. The Appeals Commission and this Council denied a request for a variance-to this code section last February.

Mr. Hickok stated this request does not have wide community support. Staff recommended denial of the zoning text change.

MOTION by Councilmember Bolkcom to receive the letter and report from the Chamber of Commerce. Seconded by Councilmember Barneffe.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND

DECLARED THE MOTION CARRIED UNANIMOUSLY.

Councilmember Bolkcom asked how many other communities around Fridley allow electronic message centers to change more often than Fridley's.

Mr. Hickok stated that every one of the bordering cities allows changeable message signs. Some cities across the metropolitan area do not allow the changeable messages at all.

Councilmember Bolkcom asked if there were any surveys of the neighborhood regarding overall support of the changeable messages.

Mr. Hickok stated that there have not been. Staff relies on the ordinance passed and when a petition has been submitted, they wait for additional feedback. If they were proposing this text amendment, that is the kind of research they would do to make a strong case.

Councilmember Bolkcom stated that they have received a petition from business owners but have not heard opposition to the requested change.

Mr. Hickok stated that they have not heard opposition or support from the community.

Councilmember Wolfe stated that he does not have any problem with this at all. The fifteen-minute change seems ridiculous, and the City itself could have one. These signs look neater than billboards. A study could be conducted on any accidents they may cause. A stipulation for-change every five minutes instead of fifteen could be added.

Mayor Lund stated that his concern is that this is fine for now, but the cost may go down and the signs could get bigger, and pretty soon it would look like Las Vegas down University Avenue.

Councilmember Bolkcom. stated that each business is only allowed eighty square feet. She would like to have less signs in the community.

Councilmember Barnette stated that several people have asked him why the Emmanuel Community Center Church sign was allowed. This sign is not located in Fridley.

Councilmember Bolkcom asked how big that sign was.

Mr. Hickok stated that he would say it is about 80 square feet.

Mr. Kelly Koenig, Daktronics, stated that he apologizes for their disappearance during the last meeting. They were informed the issue would be tabled and there was no reason they needed to stay. They did not think there would be a discussion.

Mayor Lund stated that when the question was posed to Council prior to the meeting, he stated that they advertised for this and felt they must hold the public hearing and they would consider tabling it.

Mr. Koenig stated that the issue of non-interest in the sign is not a concern. They have signatures from *59* businesses and have the support of the Chamber' of Commerce. In their own independent investigation, only one person. did not want this. Mr. Mike Hart, owner of American Masonry at 77th and East River Road, does not have any consumer product and a bid-only business. He wanted a message center to have a community billboard. He has cleaned up the corner of 77th and East River Road to add one. They conducted a valid survey and asked a good number of individuals. About eighty-seven percent (87%) of those, said they thought the signs were aesthetically appealing. Three percent (3%) stated that they did not like signs altogether and ten percent (10%) were not willing to form an opinion.

Councilinember Bolkcom asked if the poll asked whether electronic message boards were pleasing to the eye.

Mr. Koenig stated that they asked two questions. The first question was if they felt Fridley business owners should have the same sign code restrictions as other communities that border Fridley. They said "sure". Most stated that they prefer the look of the message centers. With the changeable copy boards the letters are too small to be read if there is five lines of copy. Those are more of a visual clutter than an electronic message center.

Councilmember Bolkcom stated that the issue is whether to allow electronic message centers to change at a more frequent rate.

Mr. Koenig stated that the opinion of many Planning Commission members was that it was visual clutter.

Mr. Hickok stated that in a survey presenting side by side pictures asking which one people liked better, there was no question that there was one that was clean and one that was not. The one that was clean in the survey presented was the one that is permitted by code today. It is important to talk about the signs and survey also.

Councilmember Wolfe stated that if someone asked him the same thing, he would assume the sign would change for advertising. Most people in the computer world would expect the signs to change once in a while. He does not think that people would get into an accident by reading the signs. They are sharper and neater and easier to read. Every building can only have one sign.

Councilmember Bolkcom stated that some of the property at 77 and East River Road would be destroyed to construct an electronic sign. Mr. Koenig has a vested interest but probably not a lot of people would buy electronic message boards unless they can change them on a regular basis. As Councilmember Barnette mentioned, some businesses might have signs that would not have had them before.

Councilmember Wolfe asked her what she would rather see for a sign on that property.

Councilmember Bolkcom stated that they were not there to discuss whether or not to have electronic signs because they are allowed. It is whether they can be changed more often.

Mr. Koenig stated that it will not be Las Vegas 'because of the square feet limit. The message on the signs can stay the same, but the background color may change.

Mr. Dennis Mellem, Signcrafters, stated that Spring Lake Park has a very nice liquor store down the road that has a nice message center. The one in Fridley does not have one. Is that fair?

Councilmember Billings stated that the Fridley store meets the Fridley sign code and we are not in the position to change the sign code in Spring Lake Park. The question is totally inappropriate

Mr. Mahlum stated that the difference is advertisements.

Mr. Koenig stated that by allowing businesses to advertise, the fees and charges that you are increasing to ten percent (10%) in your community could be eliminated. You could increase your revenue by increasing business revenue.

Councilmember Bolkcom stated that the City cannot raise the fees and they cannot be more than what it takes to administer the cost of those permits and inspections. They are not related to making money for Fridley.

Councilmember Billings asked if by using these signs, businesses would automatically have an increase in business.

Mr. Koenig stated that they would not automatically. It depends on the content of the signs.

Councilmember Billings asked if a business owner in Fridley would not be doing justice to the owners of the businesses to not have a sign in front of their business that changes every few seconds. If this will make every business prosper and have more revenue, every business is going want one. He is looking for some evidence to support that statement.

Mr. Koenig stated that studies on a testimonial basis of businesses that are successful can actually say that their business increased.

Mr. Jon Rider, Attractasign, stated that the issue is will Council allow the messages to change. The ordinance was written in 1984 and amended in 1988. The computer industry and the size of the machines make message centers much more effective. The sign code is generous in Fridley but this would be one item to take a look at.

Councilmember Bolkcom asked if a notice of this hearing was published.

Mr. Hickok stated that there was not any special promotion on the signs.

Councilmember Bolkcom stated that in reality, if people object to this, they probably do not even know about this unless they happened to see the last Council meeting.

Mr. Harris stated that he was part of the committee and planning process of forming this sign code. At the time, it was pretty good. The technology has since changed dramatically. Back then, we were working with a scrolling message on a board. So that there was not a continuous message, the committee suggested the fifteen-minute rule. The committee thought a continuous message would cause a safety problem. This may be a good time to take a look at the sign ordinance and bring it up to date with new technology.

Mayor Lund asked what would prevent a continuous message from occurring if the 15-minute restriction was removed.

Mr. Harris stated that an in-depth study could come up with a better ordinance to handle the new technology rather than the twenty-five year old technology.

Councilmeinber Barnette stated that Mr. Harris and Daktronics have a good point. Times have changed and he is probably going to vote for denial at this time. It may be time to look at this.

Councilmember Billings stated that he received the same message from the Chamber of Commerce about whether or not the readerboards looked good. The case is whether or not they should be changing more frequently than what the City Code allows. The report from the Chamber of Commerce has no reference to how many of the accidents are in northbound or southbound University or where you could see the sign. If there is no preclusion to having these types of signs in town, they are allowed and the messages will stay there for up to fifteen minutes at a time. The Department of Transportation uses these signs in areas where there is nothing to distract people. The fact that they are using signs that do change frequently like on 1-694 with two panels to advertise, is a signal that catches a person's eye and cause them to take their eye off the roadway to read that sign. Emmanuel Church's sign is seen from blocks away. Two people have come in looking for a variance in the last ten years. Neither were requests that were burning issues that needed something that is changed more frequently than 15 minutes with community event advertising. He agrees with Councilmember Wolfe about changing it to five or three minutes or some length of time equal to or greater than the length 'of time it takes for the average car traveling at the average posted speed to go through the area. He has not seen anything convincing him that it would be a detriment not to have the message centers.

MOTION by Councilmember Barnette to close the public hearing. Seconded by Councilmember Bolkcom.

UPON A VOICE VOTE, ALL VOTING AYE, MAYOR LUND DECLARED THE MOTION CARRIED AND THE PUBLIC HEARING WAS CLOSED.

UPON A **VOICE VOTE,** ALL **VOTE AYE, MAYOR** LUND **DECLARED THE MOTION CARRIED** AND THE **PUBLIC**

Daktronics, Inc. 331 32nd Avenue
RQ. Box 5128
Brookings, South Dakota 57006-51 28

August17, 2001

Scott Hickok
City of Fridley
Fridley Municipal Center
6431 University Ave. NE
.Fridley,MN *55432*

Dear Mr Hickok

Thank you for following up the city council meeting with the letter confirming their action. *I* was very pleased with the discussion which took place. The factual data showed that electronic displays do not contribute to traffic accidents and popular opinion reflected their universal acceptance by residents and businesses. Most opposition stems from personal taste in how messages are displayed.

I believe that most of the members of the city council felt that the frequency of message changes was not as much of an issue as the way messages traveled across the display.

I would like to propose to the Planning and Zoning committee, new wording for the paragraph rather than total elimination. If the planning and zoning committee recommends the new verbage, they will take ownership in it, and the city council will agree with it. The other approach would be to propose another change of text amendment from an outside party such as the chamber of commerce, and go through the process as before.

My recommendation for Paragraph B of section 214.07 would read:

1. The message shall not show two or more consecutive words traveling from left to right or right to left.
2. The message shall not flash all on all off more frequently than every two seconds.
3. The light output shall be dimmed to 3000 nits (candles per square meter) or less between sunset and sunrise.

I would be very interested in discussing with you some of the reasoning behind these three issues and any others that you would be concerned about, before submitting this to the council.

Your attention is very much appreciated.

Sincerely
Kelly Koenig

Memorandum

US Department of Transportation

Regional Administrators

A number of States are taking the position that certain off-premise changeable message signs are consistent with State law and do not violate the lighting provisions of their State/Federal agreement. The State of Georgia recently amended its State law to allow off-premise signs. having panels or slats that rotate provided they meet State criteria for frequency of message change and spacing. The State of Oklahoma recently considered amending its State law to also allow these signs. Because of the increased use of changeable message signs, we believe it is timely to restate our position concerning these signs

The Federal Highway Administration (FHWA) has always applied the Federal law 23 U.S.C. Sec. 131 as it is interpreted and implemented under the Federal regulations and individual State/Federal agreements. Because there is considerable variation among the states, the importance of these agreements cannot be overstated. In the twenty-odd years since the agreements have been signed, there have been many technological changes in signs including changes that were unforeseen at the time the agreements were executed. While most of the agreements have not changed, the changes in technology require the State and FHWA to interpret the agreements with those changes in mind. Changeable message signs are acceptable for off-premise signs
regardless of the type of technology used if the interpretation of the State/Federal agreement allows such signs. In nearly all

States, these signs may still not contain flashing intermittent or moving lights.

The FHWA will concur with a State that can reasonably interpret the State/Federal agreement to allow changeable message signs if such interpretation is consistent with State law. The frequency of message change and limitation in spacing for these signs should be determined by the State. This interpretation is limited to conforming signs, as applying updated technology to nonconforming signs would be considered a substantial change and inconsistent with 23 CFR 750.707(d)(5).

Barbara K. Orski

Executive Summary __

Research Review Of **Potential Safety Effects Of Electronic Billboards On Driver Attention And Distraction**

Advances in display technology and decreases in cost have created interest to expand the deployment of high resolution and dynamic imaging. The introduction of such technology to billboards, where static displays of advertising have been the standard, raises questions on the effects that electronic billboards (EBBs) may have on drivers' attention.

The Office of Real Estate Services and the Safety Core Business Unit in the Federal Highway Administration (FHWA) requested the FHWA Office of Safety, Research and Development to review literature related to the safety implications of EBBs, present findings, and recommend a research plan to address knowledge gaps. This project follows earlier work sponsored by the FHWA in 1980 and compliments driver distraction studies relative to in-vehicle displays currently underway.

Based on conversations with government staff and examination of state regulations, the literature review summarized state billboard regulations and policies relevant to EBBs and tri-vision signs. The review then encompassed billboard-related crash analyses and potential safety factors such as distraction, conspicuity, and legibility. Due to the limited amount of research regarding external distraction in drivers, internal distractions, such as in-vehicle information systems and cellular telephones, were used as surrogates when investigating how potential distractions affect the driver.

As the literature review identified and summarized potential safety effects of EBBs and for-vision signs, many questions became evident. The synthesis section organized these questions into knowledge gaps. The identified

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knowledge gaps have been categorized into the areas of roadway geometry characteristics, EBB and tri-vision sign characteristics, and driver characteristics.

Since this effort was purely a review of existing literature, no formal research was completed; the purpose of the remainder of the research review was to build upon the identified knowledge gaps. Each of the gaps was analyzed and preliminary research plans were proposed. Included in each plan are associated goals and proposed research questions. When possible, relevant research findings in which the research questions were based upon were identified.

Roadway characteristics that were recognized for future research in the knowledge gap section include horizontal and vertical curves, intersections, work zones, and EBB billboard spacing. EBBs and tri-vision sign characteristics and their proposed research questions are related to an EBBs message content and comprehensibility, exposure time, motion, and sign maintenance. Finally, research questions related to driver characteristics are directed to age and route familiarity.

United States Department of Transportation - Federal
Highway Administration

CITY COUNCIL MEETING JANUARY 28, 2002

Date: January 23, 2002
To: William Burns, City Manager

From: Scoff Hickok, Community Development Director Paul Bolin, Planning Coordinator Stacy Stromberg, Planner

Subject: Discussion On Electronic Readerboard Signs

M-02-05

The purpose of this memo is to receive guidance on possible changes to the City's most current language regarding electronic reader board signs, however, if the Council determines that a change is desirable, Staff would like direction on what the changes should include.

1. Should we remove the special use permit requirement for reader board signs-?
2. Do we want to put a time limit on how often the text can change and if so, how often should be allow it to change?
3. Should flashing and animated signs be prohibited?
4. Should staff look at revamping the entire sign code?

In preparation for this discussion, staff conducted a survey of the surrounding cities to determine their requirements on electronic readerboard signs. The attached matrix shows the findings.

OTHER CITIES ELECTRONIC READERBOARD SIGN REQUIREMENTS

Andover

Electronic readerboard signs are permitted as long as they meet the other Sign requirements for the zoning district in which the property is located. Flashing signs are prohibited.

Blaine

Electronic readerboard signs are permitted as long as the meet the following requirements:

1. They must meet the other sign requirements for the zoning district in which the property is located.

2. A minimum display time of four (4) seconds for each message within the frame of the sign is required.

3. The minimum lineal distance between electronic readerboards shall be twenty-seven hundred (2,700) feet except regional shopping centers/commercials complex.

Columbia Heights

Their Code doesn't prohibit them as long as it doesn't constitute a traffic hazard.

Coon Rapids

Electronic readerboard signs are permitted which provide public service information or advertise activities conducted on the property.
Flashing, blinking, fluttering and signs that change in brightness or color are not allowed.

Crystal

Electronically or electrically controlled readerboards that provide time and temperature, public service information, or on-site advertising are permitted provided that the sign:

1. Doesn't display moving parts, or illumination with any flashing or intermittent lights, or animation.

2. Displays a given copy or graphic image for a minimum of three (3) seconds within the readerboard frame

3. Are either a wall, free-standing or monument sign and when the readerboard is to be included in a free-standing or monument sign, the area of the readerboard may not exceed 50% of the total area of the sign in which it is integrated and only one readerboard per premise is allowed.

Fridley

Electronic readerboard signs require a special use permit.

1. They need to meet the sign requirements for the zoning district in which the property is located.

2. The message shall not change more than once every fifteen (15) minutes except for a sign displaying time, temperature and/or date.

Mounds View

Electronic readerboard signs are permitted as long as they meet the other sign requirements for the zoning district in which the property is located.

- Flashing signs are prohibited.

New Brighton

A single electronic readerboard sign per lot is permitted as long as it conforms to the ground and wall sign requirements for the zoning district in which the property is located.

- Flashing signs are prohibited.

Osseo

signs that display moving parts, or are illuminated with any flashing or intermittent lights (except to display time and temperature) or that are animated are prohibited.

Shoreview

Rotating or otherwise moving signs, flashing, blinking, or animated signs, including but not limited to traveling lights or any other means not providing constant illumination are prohibited, except electronic message center/time and temperature displays that face an arterial roadway.

Spring Lake Park

Electronic readerboard signs are permitted as long as they are not be programmed to flash in either text or graphic more frequently than once every three (3) seconds. This shall not prohibit entry and exit modes, such as change, scroll, wand, coalesce, roll, Venetian, unveil, page turn, splice or zoom.
Their code also states that they are permitted as long as they meet the other sign requirements for the zoning district in which the property is located.

Ramsey

Electronic readerboard signs are permitted as long as they meet the other sign requirements for the zoning district in which the property is located.

Flashing signs are prohibited.

St. Louis Park

Electronic readerboard signs are permitted as long as they meet the other sign requirements for the zoning district in which the property is located.

Flashing signs are prohibited.

CITY OR NORWALK

June 17, 1988

Rod Wilson
Electra-Media
1208 Pointesetta Avenue
Manhattan Beach, CA 90266

Dear Mr. Wilson,

This letter is in response to your request for accident data at the intersection of Imperial Highway and Firestone Boulevard. You requested information on accidents that occurred at this intersection due to the electronic message board on the southwest corner at Norwalk Toyota.

I've checked the accident records from *1985* to 1988 and have found no references to the message board in the reports. Imperial Highway carries 35,878 vehicles daily and Firestone Boulevard carries 25,135 vehicles. I've also received no calls or complaints regarding the board distracting drivers.

If you have any further questions, please contact me at 929-2677, extension 242.

Sincerely,

Deborah J. Shiffler
Assistant Traffic Engineer

City of Costa Mesa

FROM THE OFFICE OF THE TRANSPORTATION SERVICES ENGINEER

June 17, 1988

Mr. Rod Wilson
Electra-Media
1208 Poinsettia Avenue
Manhattan, California

Dear Mr. Wilson:

At your request, we have researched traffic accident records along Fair Drive in the vicinity of the Orange County Fairgrounds main entry. Near the Fairgrounds main entry, an extinguishable message sign with animation and motion was constructed about one year ago.

For a one year period before construction of that sign (July 1986 through June 1987), our records indicate that two accidents were reported in that area for a. one year period after sign construction (July 1987 to the present) only one accident was reported in he immediate vicinity of the sign. That action was a rear end collision which occurred in heavy westbound traffic about 150 feet east of the Fairgrounds main entry. No reference to the message sign is made in the accident report.

It is concluded, therefore that construction and operation of the extinguishable message sign has had no effect on traffic safety.

John Lower
Transportation Planning

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

AFFIDAVIT OF SUNNIE LAMARRE

vs.

Wayne Earl Dahl,

Defendant.

Court File No. TX-02-13083

STATE OF MINNESOTA)
)SS
COUNTY OF HENNEPIN)

Sunnie LaMarre, being first duly sworn on oath, hereby deposes and says the following:

1. Your affiant is employed as a paralegal at Randall Tigue Law Offices, P.A.

2. On September 30, 2002, your affiant was driving on eastbound 94, approaching the

Lowry Hill tunnel in Minneapolis.

3. At that time, your affiant noticed, immediately adjacent to the freeway, a sign, announcing that the Lowry Hill tunnel would be closed, and further announcing the days and hours of closure.

4. The announcement, apparently an official announcement by the Highway Department, occurred by means of an automatic changeable sign, which flashed different messages to the driving public.

5. Your affiant estimates the message changed approximately 24 times per minute.

6. Attached hereto as Exhibit A is a video tape taken by your affiant on September 30, 2002, of the sign. The video tape truly and accurately depicts the sign, the nature of its

changing messages and the frequency of the message changes.

7. Your affiant executes this affidavit in support of Defendant's motion to dismiss the criminal complaint in the above-entitled matter.

Sunnie LaMarre

Subscribed and sworn to before me
this____day of September, 2002

____
Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

AFFIDAVIT OF KELLY KOENIG

vs.

Wayne Earl Dahl,

Defendant.
Court File No. TX-02-13083

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF BROOKINGS)

Kelly Koenig, being first duly sworn on oath, hereby deposes and says the following:

1. Your affiant is the commercial territory manager of Daktronics, Inc., a manufacturer of electronic changeable signs, such as the

sign used by Defendant in the above-entitled matter.

2. Your affiant actively assisted Defendant in his efforts to persuade the Fridley City Council to amend its extremely restrictive ordinances governing electronic changeable signs.

3. Attached hereto as Exhibit A is a summary of facts relating to electronic changeable signs.

4. The material submitted to the Fridley City Council included the following:

   a. Your affiant obtained from the Fridley City Police Department records of traffic accidents at the intersection of Osborne Road and University Avenue, approximately one mile from Defendant's establishment. Defendant's establishment is located on the corner of Osborne Road and Highway 65. University Avenue, or Highway 47, is a comparable north-south highway.

b. A church located in the northeast corner of Osborne Road and University Avenue installed an electronic message center, similar in nature to Defendant's sign, on June 12, 2000. The sign is not limited to time, date and temperature; rather, substantive messages advertising the church's program are regularly flashed across the screen, changing constantly.

c. Your affiant obtained records of traffic accidents for the six months preceding the installation of the electronic changeable sign, and compared them to the six months following the sign. The results of the study are attached hereto as Exhibit B.

d. The study showed that in the six months preceding the installation of the sign, there were twenty accidents at the intersection in question. In the six months following the installation of the sign, there were only seventeen such accidents.

5. As a result, the study plainly indicated that there was no evidence that the presence of the constantly changing electronic moveable sign contributed to any traffic accidents; if anything, the evidence indicated that the

contrary was true.

6. The study also pointed out that the City of Mounds View installed an electronic message center in front of its city offices, with the result being a reduction in traffic accidents.

7. The study also pointed out that such signs are being used by departments of transportation for use in highway communications to reduce traffic accidents.

8. Absolutely no contrary evidence was presented to the Fridley City Council during the course of the public debate over changing the sign ordinance.

Kelly Koenig

Subscribed and sworn to before me
this___day of August, 2002.

____
Notary Public

Electronic Signage
Study

A. Safety

1. Local fact: An electronic message center was installed at the NE corner of Osborne Road and University Ave. on June 12,2000. According to Fridley MN police report, there were 20 accidents during the 6 months prior to the installation compared to 17 accidents during the 6 months after

2. Local fact An electronic message center was installed in front of the city offices in MoundsView, Minnesota in 199. According to a statement by Chief of Police Clark, the traffic accident rate has decreased since the sign has been installed. We are currently waiting for the documentation to support statement.

3. **National Fact:** Hundreds of Electronic displays have been and are currently being installed by the Departments or Transportation for use in highway traffic communication to reduce traffic incidents. The message frequency (frame

changer rate) ranges from *1-5* seconds depending on sign size and traffic speed.

4. National Fact Road builders are often required by state Departments of Transportation to place electronic message displays at construction sites to help reduce traffic incidents.

B.. Popular Opinion

1. Business Community of Fridley: Removal of paragraph B of the Fridley MN sign code restricting the message change rate is supported by the Southern Anoka County Chamber of Commerce

2. Independent Survey: In a polling of a representative sample of Fridley business managers, 99% are in support of the removal of paragraph B as supported by signed petition.

3. Residential Survey; A representative sample of Fridley residents were polled and 87% felt that the sign code should be consistent with the surrounding communities in allowing free

selection of message change rates by sign owners 10% of those polled stated that they *were* uninterested and were not willing to form an opinion. 3% favored a ban on electronic message centers along with all other *signage* and billboards.

4. Residential Survey: Those same residents also favored electronic message centers as being more attractive than manually changeable copy

This study contains information which supports the safe use and popularity of programable electronic message signs. We are asking for the removal of paragraph B of section 214.O7 in the Fridley city sign code which restricts electronic message center use to one message change every 15 minutes.

At the time the sign code was written, the effects of the use of this technology were widely unknown. Today, 30 years later, there is much information available which supports that they actually contribute to traffic safety.

Today's driver relies on effective signage for wayfinding. We as a society accept and welcome advances in technology. Electronic message displays put information in front of the public in an easily read fashion, whereas signage with small, difficult to read lettering causes drivers to strain.

Currently the sign code is written such that changes in colors is not addressed nor is the definition of a message A message by definition, is a complete thought. On an electronic display, animation clip, television commercial, etc., this may require multiple frames to accomplish. For example, a moving image of an American flag which alternates with text "Welcome to Fridley, MN, A Minnesota Star City" could be considered one message.

The interpretation of Fridley's sign code by the city is different than that of the sign industry. Technology lends itself to the ability to display information in such ways as to cause considerable controversy over the interpretation of the code as it is written.

It is our recommendation that the city of Fridley, the Chamber of Commerce, and sign consultants discuss a revised sign code which protects freedom and liberty and which does not leave itself open to interpretation controversy.